IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 56.

SOUTHERN PACIFIC COMPANY, a corporation, *Appellant*,

v.

STATE OF ARIZONA *ex rel.* JOE CONWAY, Attorney General of the State of Arizona, *Appellee*.

BRIEF FOR THE ASSOCIATION OF AMERICAN RAILROADS AS AMICUS CURIAE.

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I.

SUMMARY STATEMENT OF INTEREST, POSITION AND ARGUMENT.

With consent of the parties, this brief is filed for the Association of American Railroads, as *amicus curiae*, in support of the position that the Arizona Train-Limit Law[1] is unconstitutional. That statute makes it unlawful to operate in the State of Arizona a freight train of more than 70 cars, exclusive of caboose, or a passenger train of more

[1] "An Act Limiting the Number of Cars in a Train." Section 69-119, Arizona Code Annotated, 1939.

than 14 cars, and provides a penalty of not less than $100, or more than $1,000, for each violation.

This brief should be regarded as supplementary to the comprehensive, detailed and closely documented brief of appellant, Southern Pacific Company. It will not deal with all features of the case but will confine itself to certain aspects of particular significance with respect to the national interest in safe, efficient and economical rail transportation, the national policy concerning such transportation as established and declared by Congress, and the conflict between that interest and policy, on the one hand, and drastic limitation of train lengths by state regulation, on the other.

The Association of American Railroads is a voluntary association whose members operate approximately 99 per cent of the mileage of Class I railroads,[2] and 95 per cent of the mileage of all railroads in the United States. The Association has to do with matters of general interest to the railroad industry. In important respects the operations of all railroads are interrelated and coordinated, and this gives rise to problems which fall within the special field of the Association.

As illustrating the coordination of railroad operations throughout the United States, it is familiar knowledge that established railroad routes and rates are available between all points in the country. Transportation over such routes often involves the use of lines and services of a large number of different railroads. The freight cars of one railroad are not restricted to its line but move freely over all lines throughout the Nation. There is also a considerable interchange of locomotives, passenger coaches and Pullman cars, mail, express, and other cars assigned to the passenger and allied services. If it were otherwise, "the efficacious carrying on of interstate commerce" would be impossible.[3]

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[2] A Class I railroad, under the classification of the Interstate Commerce Commission, is one with an annual gross operating revenue of $1,000,000 or more.

[3] *St. Louis S. W. Ry.* v. *Arkansas*, 217 U. S. 136, 149.

Two members of the Association, appellant, Southern Pacific Company, and The Atchison, Topeka and Santa Fe Railway Company, conduct substantial railroad operations in Arizona and are subject to the full impact of the Arizona Train-Limit Law, except insofar as it may be suspended or set aside. All members of the Association participate in through transportation under through rates, which is performed in part through the State of Arizona, and all, therefore, are affected by the Arizona prohibition. If a railroad line in Arizona becomes congested or blocked, every route of which that line is a link becomes congested or blocked so that the movement of freight from coast to coast may be affected. An increase in the cost of performing transportation in Arizona means an increase in the cost of performing through transportation which moves across that state. Moreover, if the State of Arizona has the power to interfere with, obstruct, and seriously burden railroad operations by the prescribed limitations of train length, other states must possess like powers.

In all parts of the United States, with the exception of Arizona, and recently of Oklahoma, long-train operation is general and standard railroad practice. When we speak of long trains, we mean freight trains of more than 70 cars and passenger trains of more than 14 cars. When we speak of long-train operation,[1] we mean a method of operation which involves the use of long trains when they are justified by available traffic, service requirements, physical conditions, and other considerations, and the use of short trains when there is not sufficient traffic for long trains or when the operation of long trains is not indicated for other reasons. Long trains are used to a greater extent on lines of heavy traffic density than on lines of light density.

The obvious and fundamental fact with respect to long-train operation is that it permits the movement of a given volume of traffic in fewer trains than would otherwise be

[1] See the definition of "standard long-train operation" in the trial court's findings of fact. (R. 3888)

needed. As a result of fewer trains on the road, there are fewer meets and passes[5] and less interference and congestion. Fewer locomotives are required. The volume of freight which can be transported over a given track is increased and in this way track capacity is enlarged. These results bring about safer, more efficient, and more economical operation, and faster, more reliable and better service to the public.

During the first World War and the period immediately following, the capacity of the railroads of this country was overtaxed. Assurance was needed that the railroads would be able to meet the future requirements of commerce and of national defense. Both Congress and the railroads recognized this need, and took steps to meet it.

Prior to 1920, the policy of Congress concerning the railroads had been directed mainly to the correction of abuses, particularly those arising from unreasonable or discriminatory rates. But in the Transportation Act 1920,[6] new and important objectives were recognized. Emphasis was placed upon the public interest in adequate, economical and efficient railroad service.

Beginning in 1923, the railroads undertook and carried out a broad and continuing program for improvement of the national railroad plant. Vast expenditures were made for additions and betterments to facilities, which enabled the railroads to improve their operating methods and to develop practices now in general use, of which an important feature is long-train operation, and in that way to give better and cheaper service and to operate with much greater safety. Operating costs have been reduced, train speeds have been increased, and striking progress has been made toward safer operation, while at the same time the

[5] When two trains bound in opposite directions pass in single track operation, that is said to be a "meet." When one train passes another bound in the same direction, that is said to be a "pass."

[6] 41 Stat. 456, 474.

number of long trains and the average number of cars per train have increased. This progress in efficiency, economy and safety has been due in substantial part to long-train operation.

Severe state restrictions on train length, such as those in Arizona, to the extent they should become effective, would deprive the railroads of the most advantageous use of the facilities which they have provided at enormous expense and would reestablish outmoded, wasteful, and relatively hazardous operating practices. Service to the public would be slower and less dependable; costs of performing the service, which must ultimately fall upon the public, would pyramid; the financial stability of the national railway transportation system would be threatened; and the physical adequacy of that system to meet the needs of the national commerce and of the national defense would be endangered.

During the present war period, the railroads have made an outstanding record. But they have been under heavy strain as a result of the unprecedented volume of traffic. Problems of manpower and of motive power have been particularly urgent. Had it been necessary to run more trains to carry the same volume of traffic, more crews would have been required to man the trains and more locomotives to haul them, as well as more track space to accommodate them.

It is difficult to escape the conclusion that there would have been a physical collapse in transportation during this critical war period, with grave consequences to our national security, if train-length limitations, similar to the Arizona restriction, had been effective in a substantial number of states.

In order to avoid repetition and duplication, so far as possible, we shall not parallel the presentation in the Southern Pacific brief. There it is argued that the Arizona law is unconstitutional for the following reasons:

1. It is in conflict with the Commerce Clause because it invades the field of exclusive national regulation. The length and consist of interstate railroad trains is a subject of national and not local concern, as to which a national and uniform system of regulation is necessary, if any regulation should be desirable.

2. It is in conflict with the Commerce Clause because it necessarily, practically, and inevitably regulates and controls the length and consist of interstate trains, and other railroad operations, not only within Arizona but also with extraterritorial effect in adjoining states and for substantial distances beyond the boundary lines of Arizona.

3. It is in conflict with the Commerce Clause for the reason that, even if it should be considered that the regulation of length of interstate trains falls within the "concurrent" field of regulation, the Train-Limit Law, because it imposes direct and substantial burdens and restrictions upon, and directly and materially obstructs and interferes with, the free flow of interstate commerce, goes far beyond any powers which the state may have in the concurrent field.

4. It is in conflict with the Commerce Clause because, if considered as an attempted limitation of the length of trains for the sake of proper handling and safe control, the Train-Limit Law conflicts with, and attempts to supplement, existing federal legislation,[7] having the same or similar purposes.

5. It is in conflict with the Due Process Clause of the Fourteenth Amendment because it is arbitrary and unreasonable, has no rational basis as a police power regulation, and bears no reasonable relation to health and safety.

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[7] Safety Appliance Act of March 7, 1893, Sec. 1; 27 Stat. 531; 45 U. S. C., Sec. 1. Amendatory Act of March 2, 1903, Sec. 2; 32 Stat. 943; 45 U. S. C., Sec. 9. Interstate Commerce Act, Sec. 25; 49 U. S. C., Sec. 26.

We are in entire accord with the contentions of appellant, as above outlined, but our discussion of the law will be confined to a much narrower compass.

We readily recognize, of course, that, in the absence of occupation of the field by Congress, there is open to the states, in the exercise of their police powers, a wide range of action which may affect interstate commerce. But it is equally clear that there are limitations upon state action of this character. As a broad rule, the validity of a state law is to be tested by the extent and degree of its consistency or inconsistency with "the principal objects sought to be secured by the Commerce Clause," which have been described as "the uniformity of control of the national commerce in matters of national concern and * * * the free flow of commerce."

A state can not prescribe a regulation affecting interstate commerce if the nature of the subject matter regulated and the nature of the regulation are such that "superior fitness and propriety" require uniformity of control by a single national authority rather than diversity of control by local, state authorities. The single, national control may, of course, take the form of affirmative regulation or the form of inaction. This field of regulation, having to do with matters primarily of national and not of local concern, is exclusively for the national government and within it a state can not assume authority under any condition.

Even as to regulation which falls outside the exclusive national field and into what is sometimes called the concurrent field, the Commerce Clause prohibits state action in contravention of well settled principles. The traditional test invokes the distinction between indirect and incidental effects on interstate commerce, which are permissible, and direct and substantial effects, which are forbidden. This test has disclosed difficulties of application in some cases and in recent years new guides, or guides stated in new language, have been formulated. It has been held that a state statute

is invalid if it infringes upon the national interest in commerce. And it has been held that the validity of a state law may be judged by weighing the competing demands of the national and state interests involved. If the burden upon or interference with interstate commerce is disproportionately heavy compared with the local benefits, the state law falls because irreconcilable with the Commerce Clause. It has also been held that state regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without corresponding advantages to those within, impinge upon the constitutional provision even though Congress has not acted.[8]

The Arizona law fails to survive any of the tests above suggested.

It deals with a subject predominantly of national rather than local concern and one which requires uniform regulation, if any should be needed. Varying train-length limitations in different states could result only in obstructive and costly divergence and confusion in railroad operation and in obstructions to the free flow of interstate commerce.

The law strikes at the physical operation of railroads and interferes with and hampers that operation. Its effect on interstate commerce is not incidental or indirect but is direct, immediate, unavoidable, and serious. It demands that the railroads remove from freight trains entering the state all cars in excess of 70 and from passenger trains all cars in excess of 14. It requires the remaking of trains at points outside the state. It requires the running of additional trains within the state and for considerable distances in other states. It results in delays at terminals incident to the remaking of trains and the removal of cars from one train for hauling by a later train. It results in delays in road movement by reason of congestion and interference due to the operation of additional trains.

[8] *S. C. Hwy. Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 185, and cases cited.

It places an exorbitant burden of expense on railroad transportation which must ultimately fall upon shippers and passengers, the great majority of whom are outside of the state; and it diminishes the capacity of railroad lines within the state and far beyond its borders, and thus imperils their ability to meet transportation requirements.

The Arizona law serves no local interest or objective which justifies the burden which it casts upon interstate commerce. The local purpose which it is claimed to serve is one of safety, but the record conclusively shows that it does not serve this purpose. On the contrary, the law has an adverse effect on safety. Even if it be assumed, however, that the law has sufficient relationship to safety to give it a rational basis as an exercise of police power, there can be no doubt that, at most, the local safety benefits are dubious and inconsequential. In contrast, the burden upon interstate commerce is great and continuous.

The state law impinges in a violent manner upon the national interest in commerce. This is apparent from what has been said concerning the nature and extent of the burden which it places upon interstate railroad transportation and upon the instrumentalities of such transportation. This burden is of special significance when viewed in the light of the part played by these great carriers in the life of the Nation and in the light of the National Transportation Policy manifested and expressly stated by Congress.

The railroads transport the bulk of the Nation's traffic. At all times they are indispensable, and in war time the failure of the railroads would imperil the Nation. It is almost impossible to overstate the importance of railroad transportation to the national well-being. The railroad system "is the most important single element in our social and economic life. * * * Both security and material welfare are involved in its continued efficient existence."[9] Again it has been said that "If our railroads fail, our en-

[9] Report of the National Transportation Committee, February 13, 1933, page 8.

tire world-wide military effort fails. We might suffer military reverses and still win this war—but we can't avoid defeat should our railroads fail."[10]

It follows that the efficiency and economy of railroad operation are matters of profound national concern. This has been expressly recognized by Congress. As amended by the Transportation Act of 1940,[11] the Interstate Commerce Act contains, preceding Part I, a specific declaration that it is the "National Transportation Policy"—

> "to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation * * *."

This was a reaffirmation of the policy which has guided Congress since 1920 and which has been considered by this Court in a number of cases where it was pointed out that "avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public,"[12] and that the public interest has "direct relation to adequacy of transportation service, to its essential conditions of economy, and to appropriate provision and best use of transportation facilities."[13]

The Arizona law is, therefore, squarely in conflict with the National Transportation Policy, and for that reason, cannot be upheld. There is a marked distinction between a state regulation which is in conflict with the national policy and one which is in accord with and in furtherance of the national policy.[14]

It has been said that even in the "joint field" of regulation, a state can take action which affects interstate com-

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[10] Colonel J. Monroe Johnson, member of Interstate Commerce Commission and now Director, Office of Defense Transportation, in a radio broadcast from Station WRC over the National Broadcasting Company network, May 8, 1943.

[11] 54 Stat. 898, 899.

[12] *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 317.

[13] *N. Y. Central Securities Co.* v. *U. S.*, 287 U. S. 12, 25.

[14] *Parker* v. *Brown*, 317 U. S. 341, 367-8.

merce only under circumstances from which it can be reasonably inferred that Congress, by not occupying the field has "tacitly authorized"[15] such action, or has indicated its "acquiescence"[16] therein.

Whether or not such tacit authority or acquiescence is fairly to be inferred in a particular case must be gathered from all surrounding circumstances, including the nature of the subject matter which is regulated and the national interest in and policy concerning such subject matter, and including the effect of the regulation upon interstate commerce and upon any local, state interest which it may purport to serve.

In this case, a consideration of all surrounding circumstances negatives any possibility that the fact that Congress has not entered the field of train-length regulation, which fact we assume for purposes of argument, could be regarded as a tacit authorization for the State of Arizona arbitrarily to regulate the length of interstate trains with the results above outlined.

This Court has upheld many state statutes which affected interstate commerce, but none, so far as we can ascertain, which has placed so heavy a burden on such commerce as the statute now under consideration, and none which has infringed so deeply upon the national interest in transportation or conflicted so sharply with the National Transportation Policy. Nor has this Court upheld any state regulation which placed a burden on interstate commerce so grossly disproportionate to any possible local good to be accomplished. Indeed, the Court has struck down state statutes, as violative of the Commerce Clause, the effects of which on interstate commerce were much less obstructive and burdensome than those of the Arizona law.

In closing this summary, it should be said that the Supreme Court of Arizona failed to apply the governing prin-

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[15] *Chi., R. I. & c. Ry. v. Hardwick Elevator Co.*, 226 U. S. 426, 435.

[16] *The Minnesota Rate Cases*, 230 U. S. 352, 402; *Graves v. N. Y. ex rel. O'Keefe*, 306 U. S. 466, 479.

ciples of law in that it wholly failed to consider or give weight to the findings of fact of the trial court or to the evidence of record, both of which show beyond dispute that the statute places a heavy burden on interstate commerce and serves no substantial purpose of local safety. It did not modify those findings of fact or set them aside, but seemed to proceed on the erroneous view that a state requirement claimed to be based upon considerations of local safety is protected by a presumption of validity which cannot be overthrown by any showing, even including the showing that no local safety benefits are actually involved and that interstate commerce is grievously burdened, contrary to the national interest and in conflict with the National Transportation Policy.

II.

IMPORTANCE OF THE RAILROAD TRANSPORTATION SYSTEM TO THE NATIONAL INTEREST.

In considering whether the subject matter regulated by the Arizona law, or by any similar state law restricting the length of trains, is one predominantly of national rather than of local concern, and one which should be regulated by a single authority, if at all, there must be taken into account the vital importance of railroad transportation, and of its adequacy and efficiency, to the Nation as a whole, and to those purposes, objectives and activities for which the responsibility rests with the Federal Government and not with the states.

This is also a factor of great significance in weighing the nature and extent of the burden imposed upon interstate commerce by a state regulation of train length which interferes with and obstructs railroad operation, impairs its efficiency, and threatens the adequacy of railroad service.

The railroads occupy a place in our national life too well known to require extended discussion. They are the principal instrumentality of transportation. They carry the bulk

of all goods which are moved. Their activities are preponderately interstate. Their lines extend and their trains operate to and from every part of the Nation without regard to state boundaries. They are indispensable to our economic life, our political unity, and our defense against foreign enemies. Their ability to perform well their great task is a matter of profound national concern.

All this has been stated repeatedly by the highest authorities of the Federal Government, as well as by others informed upon the subject of transportation. A few representative statements, selected from a large number, may be of interest to the Court.

President Franklin D. Roosevelt, then Governor of New York, in a public address at Salt Lake City on September 17, 1932, declared:[17]

> "The problem of the railroads is the problem of each and every one of us. No single economic activity enters into the life of every individual as much as do these great carriers. (p. 713.)
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> The individual railroads should be regarded as parts of a national transportation service. (p. 717.)
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> The economy and efficiency of railroad operations will depend upon the capacity of railroad management and its freedom from undue burdens and restraints when this is balanced by acceptance of public responsibilities. (p. 721.)
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> • • •
>
> Every great economic interest in the Nation requires the continuous, efficient operation of the railroads. • • • So the constant improvement in the economy and efficiency of transportation is a matter of ever-present national concern. (p. 721.)
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> • • •
>
> The railroad mesh is the warp on which our economic web is largely fashioned. It has made a continent into a Nation. It has saved us from splitting,

[17] The Public Papers and Addresses of Franklin D. Roosevelt, Random House, New York, 1938, Vol. I, pp. 711-723.

like Europe, into small, clashing, warring units. It made possible the rise of the West. It is our service of supply. These are not matters of private concern." (p. 722.)

The National Transportation Committee, composed of Calvin Coolidge, Chairman; Bernard M. Baruch, Vice-Chairman; Alfred E. Smith; Alexander Legge; and Clark Howell, made a report, under date of February 13, 1933, in which it was stated:[18]

> "At the foundation of our system of communication is the railroad web. It is the most important single element in our social and economic life. Its rapid extension enabled us to cover the greater habitable part of a continent with a cohesive form of liberal government of 125,000,000 people united in a common language, purpose and ideal and to maintain National solidarity through periods of stress. Both security and material welfare are involved in its continued efficient existence. The public interest is deeper than its investment or its need of good service. We are addressing a matter of National concern of the first magnitude. The railroad system must be continued and its efficiency preserved because of National necessity—economic, social and defensive."

Lieutenant General Brehon Somervell, Commanding General of the Army Service Forces, pointed out in a radio broadcast on July 17, 1944:[19]

> "Even though our own country is thousands of miles from the actual theaters of operation, the success or failure of our transportation system right here at home might mean the difference between success or failure in France or in the South Pacific. We in the armed forces of the United States think of transportation as a military tool—a weapon as important as the very

[18] Report of the National Transportation Committee, February 13, 1933, page 8.

[19] Broadcast from Station WRC, Washington, D. C., over National Broadcasting Company network.

tank or gun it transports from factory to fighting front. It is no exaggeration to say that railroads are war roads."

Major General Charles P. Gross, Chief, Transportation Corps, U. S. Army, in a radio broadcast on June 21, 1944, expressed the judgment that,[20]

> "Global war would be impossible without our modern means of transportation. Without the railroads, the war might of our country could not be mobilized."

The late Joseph B. Eastman, then a member of the Interstate Commerce Commission and Director of the Office of Defense Transportation, said on May 13, 1942, in an address at Chicago:[21]

> "Never in the history of the railroads has there been a time when efficient operation was of such prime importance, not only to the railroads but to the Nation and even to the world. * * *
>
> In modern production and even in modern battle, there is no factor which is of more vital and all-persuasive importance than adequate and efficient transportation. * * * We cannot fight without transportation, and we cannot do our best fighting unless the transportation is adequate and efficient."

In his 1934 report to the Congress as Federal Coordinator of Transportation, Mr. Eastman made the following statement:[22]

> "The railroads are still an essential, and by far the most important, form of public transportation, and the prospects are that they will continue so to be."

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[20] Broadcast from Station WOL, Washington, D. C., over Mutual Broadcasting System.

[21] Joseph B. Eastman, "Problems of War Transportation," Proceedings of American Association of Railroad Superintendents, Chicago, Illinois, May 12-14, 1942, pp. 177-178.

[22] Joseph B. Eastman, Report of the Federal Coordinator of Transportation on Transportation Legislation, 74th Congress, 1st session, House Document No. 89, 1934, page 5.

Colonel J. Monroe Johnson, then a member of the Interstate Commerce Commission and now Director, Office of Defense Transportation, in a radio speech on May 9, 1943, stated:[23]

> "We might suffer military reverses and still win the war, but we cannot avoid defeat should our railroads fail."

The Honorable Henry L. Stimson, Secretary of War, in a radio speech on December 28, 1943, said:[24]

> "The American nation has taken the greatest pride in the patriotic devotion which railroad men and women have displayed under unprecedented demands which this war has placed upon them. During the present emergency, the railroads have been bearing more than 90 per cent of the burden of all transportation. * * * The armed forces cannot discharge their responsibility for the national safety without the assistance of the railroads."

The Honorable Edward R. Stettinius, Jr., then Administrator, Office of Lend-Lease, and now Secretary of State, said in July, 1943:[25]

> "America is accustomed to efficient service from its railroads, but in this, our greatest emergency, the roads have written their brightest chapter. They have come through with a performance that sets a new mark for railroading. They are making a major contribution to our united war effort."

In its report of December 15, 1943, a special committee of the Senate investigating the national defense program, pursuant to S. Res. 71, 77th Congress, and S. Res. 6, 78th Congress, stated:[26]

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[23] Broadcast from Station WRC, Washington, D. C., over National Broadcasting Company network.

[24] Broadcast from Station WRC, Washington, D. C., over National Broadcasting Company network.

[25] Railway Age, July 24, 1943, page 130.

[26] Report No. 10, Part 13.

"A break-down, or even a diminution in transportation service, would have incalculable repercussions on our war effort. (page 1.)

* * *

Transportation is so vital and a break-down would be so disastrous that we cannot afford to run the risk of even approaching the breaking point. (page 5.)

* * *

* * * the increased load of traffic in the war years has fallen most heavily upon the railroads." (page 6.)

The Honorable Oren Harris, of Arkansas, in a speech before the House of Representatives on May 23, 1944, said:[27]

"The railroad industry is one of the greatest. It has made and is making a tremendous contribution to the welfare of this great country. Its real worth has again been shown during this war."

III.

THE NATIONAL TRANSPORTATION POLICY.

In the light of what has been said, the deep, pervading national interest in the adequacy, efficiency and economy of rail transportation is self-evident. On this subject Congress has expressed itself in unmistakable terms. The Transportation Act of 1940[28] amended the Interstate Commerce Act by adding, immediately preceding Part I, a declaration of "National Transportation Policy", from which the following is quoted:

"It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation * * *; to promote *safe, adequate, economical, and efficient service and foster sound economic conditions in transportation* * * *; to encourage the establishment

[27] Congressional Record, May 23, 1944, page 4998.

[28] 54 Stat. 899.

and maintenance of reasonable charges for transportation services, * * *;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, *adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense.* All of the provisions of this act shall be administered and enforced with a view to carrying out the above declaration of policy." (Emphasis supplied.)

The amendment of 1940 did not change but merely confirmed and strengthened the policy of Congress concerning railroads, which had been reflected in the Interstate Commerce Act since the amendments embodied in the Transportation Act of 1920.[20]

On many occasions this Court has been called upon to consider the policy of Congress concerning transportation. In *McLean Trucking Co.* v. *U. S.*, 321 U. S. 67, 80-81, it was pointed out that the National Transportation Policy is the product of a long history of trial and error by Congress in the regulation of the Nation's transportation facilities, beginning with the Interstate Commerce Act of 1887; that the Transportation Act of 1920 marked a sharp change in policies and objectives embodied in such regulation; that, theretofore, the efforts of Congress had been directed mainly to the prevention of abuses, but that the act of 1920 added "a new and important object to previous interstate commerce legislation" in seeking "affirmatively to build up a system of railroads prepared to handle promptly all the interstate traffic of the country". It was pointed out further that the objectives of the policy of Congress included "adequacy of transportation service . . . its essential conditions of economy and efficiency, and . . . appropriate provision and best use of transportation facilities."

In *Purcell* v. *United States*, 315 U. S. 381, 385, it was said:

[20] 41 Stat. 474.

> "This Court has recognized that operation of the national railway system without waste was one of the purposes the Transportation Act of 1920 was intended to further."

In *Texas* v. *United States*, 292 U. S. 522, 530, the Court stated that the Transportation Act of 1920 introduced into the federal legislation a new railroad policy:

> "* * * seeking to insure an adequate transportation service. To attain that end new rights, new obligations, new machinery were created. [citations omitted] It is a primary aim of that policy to secure the avoidance of waste. That avoidance, as well as the maintenance of service, is viewed as a direct concern of the public."

The railroads are under a "federal duty * * * efficiently to render transportation services in interstate commerce." *Colorado* v. *United States*, 271 U. S. 153, 165. It is the policy of Congress to prevent "an injurious waste" and to secure "more efficient transportation service." *N. Y. Central Securities Co.* v. *U. S.*, 287 U. S. 12, 26. That policy "recognized that preservation of the earning capacity, and conservation of the financial resources, of individual carriers is a matter of national concern", *Texas & Pac. Ry.* v. *Gulf, Etc. Ry.*, 270 U. S. 266, 277; and that "the public and the carriers are alike interested in maintaining adequate, uninterrupted transportation service at reasonable cost." See also *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312, 317; *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 585; *New England Divisions Case*, 261 U. S. 184, 189-192; *Dayton-Goose Creek Ry.* v. *U. S.*, 263 U. S. 456, 477-478; and *Florida* v. *United States*, 292 U. S. 1, 6-8.

The *Colorado* case, *supra* (271 U. S. 153), dealt with the abandonment, as respects both intrastate and interstate commerce, of an unprofitable branch line of railroad lying wholly within the state of the owning company's incorporation. The unified and interdependent character of interstate and intrastate railroad operations appear strikingly from a statement, at page 163, that harmful effects

upon interstate commerce may be caused "by excessive expenditures from the common fund in the local interest, thereby lessening the ability of the carrier properly to serve interstate commerce."

One of the burdensome features of the Arizona law is that it requires excessive expenditures for a purported local interest by railroads whose lines run through many states and whose activities are chiefly interstate.

If it should be contended that the National Transportation Policy has no purpose or effect except in connection with the administration of the Interstate Commerce Act, a ready and final answer is afforded by *Davis* v. *Farmers Co-operative Co., supra* (262 U. S. 312), and *Lehigh Valley R. R.* v. *Commissioners*, 278 U. S. 24, 35. In the *Davis* case, it was held that a Minnesota statute was invalid and obnoxious to the Commerce Clause, in its application to the particular facts presented, because it imposed a serious burden on interstate commerce, which unduly interfered with the policy of Congress as manifested in the Interstate Commerce Act. The statute under scrutiny in that case provided that any foreign corporation having an agent in the state for the solicitation of freight and passenger traffic over lines outside the state might be served with summons by delivering a copy thereof to such agent.

The issue in the case was the constitutionality of applying the statute in an action brought against a railroad company which neither owned nor operated a railroad within the state, by a plaintiff who did not reside there, upon a cause of action which arose elsewhere out of a transaction entered into elsewhere. The Court took judicial notice of the fact that there is a large volume of litigation against interstate carriers on personal injury and freight claims, and that a heavy expense, with a corresponding impairment of the carriers' efficiency, is involved when such litigation is conducted in jurisdictions remote from where the cause of action arose. The Court held that such expenses would involve waste in interstate transportation contrary to the purposes and objectives of Congress as reflected in

the Transportation Act of 1920, and that the state law, as applied by the state court, was accordingly invalid because it unreasonably obstructed and unduly burdened interstate commerce. The following quotation is from page 317 of the opinion (262 U. S. 312):

> "The public and the carriers are alike interested in maintaining adequate, uninterrupted transportation service at reasonable cost. This common interest is emphasized by Transportation Act, 1920, which authorizes rate increases necessary to ensure to carriers efficiently operated a fair return on property devoted to the public use. See *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184. Avoidance of waste, in interstate transportation, as well as maintenance of service, has become a direct concern of the public. With these ends the Minnesota statute, as here applied, unduly interferes. By requiring from interstate carriers general submission to suit, it unreasonably obstructs, and unduly burdens, interstate commerce."

In view of the policy of Congress, as reflected in the Interstate Commerce Act since 1920, and as explicitly stated in that Act after the amendments of 1940, with respect to the adequacy, efficiency and economy of railroad transportation, the avoidance of waste, the interest of the public in reasonable rates, and the conservation of railroad resources, it would seem little less than fantastic to impute to Congress an intent to leave states free to enforce a burdensome, oppressive and improvident regulation of interstate commerce such as the Arizona Train-Limit Law.

On this point *Parker* v. *Brown*, 317 U. S. 341, throws light. That case involved the validity of a prorating marketing program under the California Agricultural Prorate Act, adopted by the state for regulating the handling, disposition and prices of raisins produced in California, a large part of which go in interstate commerce. The Court held that the state action dealt with a problem local in character, which urgently demanded state action.

for the economic protection of those engaged in one of its important industries. It held further that such effect as the operation of the California prorate program might have on interstate commerce was one "which it has been the policy of Congress to aid and encourage" (page 368), and that, therefore, it could not be said "that the effect of the state program on interstate commerce is one which conflicts with Congressional policy * * *." The reasons which led the Court to sustain the California marketing statute would lead to the conclusion that the Arizona Train-Limit Law should be set aside.

IV.

THE EFFECT OF THE ARIZONA LAW ON THE SAFETY OF RAILROAD OPERATION.

The effect of the Arizona law upon safety is discussed at length in the brief for appellant, Southern Pacific Company (Volume I, pp. 27-50; 202-205; 263-269. Volume II, pp. 125-203; and in the brief for the United States as *amicus curiae*, pp. 34-44). Accordingly, we shall restrict our discussion to certain outstanding features.

We think there is no doubt that a stringent train-length limitation, such as that of Arizona, is an affirmative, anti-safety measure which greatly increases the hazards incident to train operation. This is one of the reasons for the opposition by the railroads to a regulation of this character. Since the first World War extraordinary progress has been made in the field of railroad safety. Further progress should not be hampered, and even less should the progress already accomplished be sacrificed.

There are many causes of casualties[30] to persons incident to train operation. The only serious claim which has been

[30] Casualties include injuries and fatalities. Under the classification of the Interstate Commerce Commission an injury which incapacitates an employee for his ordinary work for more than three days, or incapacitates a person other than an employee for more than one day, is a reportable casualty. (R. 3975)

advanced in support of the Arizona law is that it has a beneficial effect with respect to slack-action casualties to employees.

The nature and cause of slack-action are dealt with at length in the findings of the trial court. (R. 3969-74) With respect to slack-action casualties the court found (R. 3990-1):

> "Plaintiff bases its contention that the train-limit law is a safety statute almost entirely on the theory that it will minimize or greatly lessen the so-called 'slack-action' or 'slack-surge' accident—a form of accident classified by the Interstate Commerce Commission as being caused by a shock incident to a sudden starting, stopping, lurch or jerk of the train. Casualties resulting from this type of accident are confined almost entirely to road freight conductors, brakemen and flagmen on duty, occur most frequently when they are in the caboose, occasionally when on top of the train, and infrequently when they are on the side of a car or caboose, or attempting to board or leave a car or caboose."

When we speak of slack-action casualties hereinafter it should be understood that the reference is to casualties of this character to road freight conductors, brakemen and flagmen on duty.

It seems plain that the Arizona law must be scrutinized in the light of its net effect on all hazards attendant upon train operation and not with reference to only one hazard, in disregard of the others.

From the findings and the evidence, the following facts stand out: Slack-action casualties are of relatively minor importance when compared with other classes of casualties incident to train operation. The Arizona law has no appreciable or perceptible beneficial effect even with respect to slack-action casualties. It has an extremely harmful effect with respect to practically all other classes of casualties, including those of the most serious character. The net effect of the law is to increase substantially the hazards of railroad operation.

The reason why casualties of practically all kinds are increased by restrictive train-length regulation is that they are related to the number of trains run. Casualties of some classes tend to increase in direct proportion to the number of trains run. (Examples are highway grade-crossing casualties, and casualties to persons struck and run over by engines or trains at places other than grade crossings.) Casualties of certain other classes tend to increase in greater proportion than the number of trains, because train meets and passes are a contributing factor to these casualties. We have seen that meets and passes multiply as the number of trains increases.[31] (Examples are casualties due to collisions between trains and casualties due to employees getting off and on trains.)

A. Slack-Action Casualties are of Relatively Minor Importance.

The trial court found that slack-action accidents are "of comparatively infrequent occurrence." (R. 3991) It also found that the "relative unimportance" of slack-action casualties was shown by a comparison of such casualties to employees with all casualties to employees; that in the period 1923-1939 slack-action casualties on all railroads in the United States represented only six per cent of all casualties to all employees; and that slack-action fatalities to employees amounted to less than one per cent of the total employee fatalities. (R. 3979, 3980, 4052. See also R. 3304) The trial court stated in its memorandum opinion that "slack-action casualties on passenger trains are of no significance whatever." (R. 4050)

The casualty figures referred to above relate only to railroad employees, but casualties incident to train

[31] As a result of the Arizona law it was necessary in 1938 to run 28 per cent more trains (4,304 more freight trains and 33 more passenger trains) between Yuma and El Paso than would have been necessary otherwise, but this increased the number of train meets and passes by 63 per cent or 16,500. (R. 3958, 3964-5, 4021, 4051)

operations occur to others as well. The relative unimportance of slack-action casualties to employees in the field of railroad accidents becomes unmistakable when such casualties are compared with all casualties to all persons incident to train operation. In the period 1935-1939, the number of slack-action casualties to employees on all Class I railroads was only 2.3 per cent of the number of casualties to all persons, and the number of employee fatalities from slack-action was less than one-tenth of one per cent (0.07%) of the number of all fatalities.[32]

Another sharp reminder of the comparatively minor importance of slack-action casualties is the fact that on all railroads in the United States during the period 1935-1939, the number of grade-crossing casualties alone was 11½ times the number of slack-surge casualties and the number of grade-crossing fatalities was considerably more than 400 times the number of slack-action fatalities. (R. 3304, 3306) In this connection, it will be recalled that "'long-train' operating practice is the customary and ordinary practice throughout the United States," as stated in the memorandum opinion of the trial court (R. 4046), and that the slack-action casualties and fatalities referred to above reflect operation of that character. (Neither will it be overlooked that a train-limit regulation results in more trains and in a corresponding increase in grade-crossing fatalities and injuries, as we shall show later in more detail.

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[32] Statistics showing casualties to all persons in accidents incident to train operation are not in the record. They were taken from Accident Bulletin Nos. 104 through 108, published by the Interstate Commerce Commission and covering the years 1935 through 1939, respectively. The data appear in Table No. 55 of each issue of the Accident Bulletin, page 24 of Bulletin No. 104, page 26 of Bulletin No. 105, page 30 of Bulletin Nos. 106 and 107, and page 32 of Bulletin No. 108. They represent the "Grand total, non-trespassers and trespassers", killed and injured in "train accidents" and in "train service accidents", for Class I railways. The number of slack-action casualties is taken from the findings of the trial court. (R. 3980. See also R. 3304.)

B. Even with Respect to Slack-Action Casualties the Arizona Train Limitation Has No Perceptible or Appreciable Beneficial Effect.

In the memorandum opinion of the trial court, it was stated (R. 4052):

> "It must also be remembered that there are many factors besides length of train causing slack-action casualties, such as: grades, speed of train, consist of train and whether loaded or empty. The record shows many severe casualties of this type on short trains. *Limiting trains to the Arizona maxima has had no perceptible limiting effect on even that class of accidents,* * * *" (Emphasis supplied.)

The trial court found (R. 3973):

> "It is likewise not true that the Train-Limit Law, by restricting the lengths of freight trains, either eliminates or substantially reduces the number or severity of the casualties attributable to slack-action shocks in cabooses or other cars at or near the rear end of trains. The evidence indicates that in the operation of long trains, there have been many instances of severe jerks and jolts occurring at the rear end of the train because of slack-action, and that injuries have been suffered by brakemen and conductors as a result thereof. The record contains many similar instances occurring in connection with the operation of short trains."

The trial court also found (R. 3986):

> "It clearly appears that the enforcement of the Arizona Train-Limit Law has not been accompanied by any measurable decrease in so-called slack-action casualties, as compared with the standard long-train method of operation, but has been accompanied by a greater proportion or ratio of casualties to passengers, and to all employes, as well as to freight-train employes, from all causes that lead to train and train-service accidents."

The trial court further found (R. 3991):

> "The train-limit law has been observed long enough, and under such circumstances, as to afford a fair basis for judging whether a law limiting the length of a freight train to 70 cars, exclusive of caboose, can be said to be reasonably effective in the prevention or minimization of slack accidents and incident casualties. It clearly appears, and it is hereby found, that said law has not had that effect in Arizona, as to the defendant's freight-train operations in that state, either when they alone are considered, or when they are compared with defendant's freight-train operations in Nevada."

During the period 1923 to 1939, while there was an increase in the proportion of long trains operated in the United States, there was a very pronounced decrease in the number of slack-action accidents. The employee casualty rate per million train-miles for the period 1923-1928, for this type of accident, was 2.75, and for the period 1935-1939, it was 1.05. (R. 3979, 3304) For the year 1923, the rate was 2.88 and for the year 1939, 0.86. The average length of freight trains in the United States in 1922 was 38.4 cars; in 1926, 45.2 cars; in 1930, 48.9 cars; in 1934, 46.2 cars; in 1938, 47.7 cars, and in 1939, 49.1 cars. (R. 3937) The increase in average train length reflects only to a limited extent the increase in the relative number of long trains.

In Nevada, the Southern Pacific operates a large number of long freight trains in proportion to the total number of trains. During four representative months of 1939, 66.2 per cent of the Southern Pacific freight trains in Nevada were long trains. (R. 3916) The proportion of long trains so operated and the average number of cars per freight train have increased sharply since 1922. In that year there were 48.92 cars per train; in 1927, 69.17 cars; in 1932, 81.06 cars; in 1937, 74.43 cars; in 1938, 78.77 cars; and in 1939, 78.46 cars. (R. 3917)

In 1923 there were 7.97 slack-action casualties to employees per million train-miles on the Southern Pacific in Nevada, and in 1940 the rate was only 1.96. For the period 1923-1928, when the average number of cars per freight train on the Southern Pacific in Nevada was 58.51, the number of slack-action casualties to employees per million train-miles was 4.32; for the period 1929-1934, when the average number of cars per freight train in Nevada was 72.66, the number of slack-action casualties to employees per million train-miles was 3.25; and for the period 1935-1940, when the average number of cars per freight train in Nevada was 77.86, the number of slack-action casualties to employees per million train-miles was 2.45. (R. 3375) *It is highly significant that in the entire period from 1923 to 1940 there was only one employee fatality from slack-action on the Southern Pacific in Nevada, where long trains predominate, and that this occurred in 1927 on a short train of 60 cars.* (R. 3367, 3375, 3991) *During the same period there was also one employee fatality from slack-action in Arizona, where only short trains were run, and this occurred in 1926.* (R. 3375)

In a later section, dealing with the burden which the Arizona law imposes upon interstate commerce, we shall discuss Service Order No. 85 of the Interstate Commerce Commission, entered September 11, 1942, (7 Fed. Reg. 7258) and the subsequent report of the Commission with respect to that order, *In the Matter of Service Order No. 85*, 256 I. C. C. 523. The service order suspended state regulations limiting train length during the period of the war. At this time we wish merely to refer to a statement in the Commission's report concerning safety. At page 536 it was said:

> "The fact that freight trains in excess of 70 cars and passenger trains in excess of 14 cars are safely operated in other States is convincing evidence of its safety, except where unusual operating conditions exist."

The Interstate Commerce Commission is fully and currently informed about accidents and casualties incident to train operation. For many years, pursuant to the Accidents Report Act,[33] it has required monthly reports of such accidents and casualties on forms prescribed by it and filed under oath by the carriers. (R. 3974) Moreover, the Commission conducts investigations through its own representatives of serious accidents, including 90 per cent of those resulting in fatalities. As stated by the trial court in its memorandum opinion, "It is rather significant that they [the Commission] have failed to find or report in any one year that the length of trains had anything to do with the number of casualties." (R. 4051)

C. The Arizona Train-Limit Law Increases the Hazard of Practically All Kinds of Accidents and the Net Result of the Law is to Make Train Operation Much More Hazardous.

In the memorandum opinion of the trial court it was stated (R. 4052-3):

> "Thus the Arizona Train-Limit Law not only bears no reasonable relation to safety, but to the contrary, does, and if enforced will continue to, impair and lessen substantially the safety of defendant's train operations in Arizona and the adjacent affected territory."

In the memorandum opinion it was also stated (R. 4051):

> "Furthermore, this record contains exhibits comparing the defendant's freight-train operations in Arizona with its operations in Nevada and New Mexico, as well as the Class I roads of America. The element of speculation, as to the result of long and short-train operations, is therefore largely eliminated. From all of which it appears very definitely that there are more accidents and they occurred more frequently in pro-

[33] 36 Stat. 350, U. S. C., Title 45, Sec. 38 et seq.

portion to trains handled or traffic moved in short-train territory than in long-train territory. Reference is made to the findings of fact for details to support this statement."

The trial court found (R. 3981):

> "Although during the period 1923-1939, covered by the National statistics in evidence, there have been substantial improvements in the road-bed and equipment of American railroads, it is clear from a consideration of all of the evidence in the case that *a considerable part of the improvement in casualty rates on those railroads during the same period is directly attributable to the adoption and growth of the standard long-train method of handling freight and passenger traffic*, because thereby a substantially less number of train units was operated than would have been operated for the same volume of traffic had not the long-train policy been followed." (Emphasis supplied.)

The notable progress which the railroads have made in improving safety conditions for employees is clear from the statistics. In 1923, there were 32.15 casualties to all classes of employees per million train-miles on all Class I railroads, and in 1939 only 7.87. For the period 1923-1928, there were 26.02 employee casualties per million train-miles; for the period 1929-1934, the rate was 11.53; and for the period 1935-1939, the rate was only 8.59. (R. 3300)

With respect to certain important classes of casualties which are increased by train-length limitation and the resulting necessity of running more trains, the Court found (R. 4020):

> "Insofar as concerns safety of employment, all said train service employes, and as well all employes whose duties require them to be or go upon the tracks, are affected by the law; in that by increasing the relative number of trains run, said law increases the hazards of train and train-service accidents to which such employes are subject, and particularly (among others) the following hazards: (1) of being struck and run down while on or near the tracks in the course of duty,

(2) of being involved and injured in head and rear-end collisions; (3) of being involved in locomotive accidents; (4) of being injured in grade-crossing accidents; (5) of slipping or falling while getting on or off trains."

The trial court particularly pointed out in its findings the major importance of grade-crossing casualties and the relationship of such casualties to the number of trains run. It stated that during the period 1923-1939 there were 112,207 casualties on all railroads in the United States due to grade-crossing accidents and that 24.8 per cent, or 27,792, were fatal. It also pointed out that over the 17-year period the average rate of grade-crossing casualties per million train-miles was 6.45 and that in no year was there any substantial variation from this average.[34] (R. 4014) It is obvious that a substantial increase in the number of train-miles, as a result of the arbitrary limitation of train length, would result in a heavy increase in the number of grade-crossing fatalities.

The record shows that for the year 1937 the number of fatalities in the United States from grade-crossing accidents was 1,607 and that the total number of train-miles was 933,219,000. The rate of fatalities per million train-miles was 1.72. (R. 3306) At hearings on S. 69 before the Committee on Interstate and Foreign Commerce, House of Representatives, which were held from January 11 to March 18, 1938, 75th Congress, it was estimated by railroad spokesmen that a federal train limitation of 70 cars would have increased the train-miles in 1937 by more than 60,000,000.[35] On the basis of the statistical relationship above set forth, such an increase in train-miles would have

[34] The constant rate is presumably the result of two forces working in opposite directions: first, an increase in the number of automobiles which tended to increase the rate; and second, elimination of some crossings and improved protection at others which tended to reduce the rate.

[35] Printed transcript of hearings, pp. 370, 852.

increased fatalities from grade-crossing accidents in the United States by 103 during that year.

Grade crossings constitute a serious hazard in Arizona. In the period 1923 to 1939, there were 384 grade-crossing casualties in that state, of which 82 were fatalities and 302 were injuries. (R. 3422) It also appears that the Arizona Train-Limit Law resulted in 28.4 per cent excess freight and passenger trains in 1938. (R. 3958) This would seem to leave no doubt, in view of the relationship between the number of trains operated and the number of grade-crossing accidents, that the Arizona law has been responsible for a large number of deaths and injuries.

Among other important classes of casualties with respect to which train-length limitations are directly contributory is that of "casualties to persons struck or run over by cars or locomotives at places other than highway grade crossings." Casualties of this kind include a very high percentage of fatalities. In 1939, on all Class I railroads in the United States there were 2,347 such casualties, of which 1,536, or 65.4 per cent, were fatalities. Casualties of this kind, as would be expected, bear a very close relationship to the number of train-miles. During the period 1923-1939 there were 3.28 such casualties per million train-miles. For the year 1937, there were 3.08 casualties of this kind per million train-miles, of which 62.1 per cent were fatalities. It will be seen that if 60,000,000 additional train-miles had been run in 1937 approximately 185 additional struck-or-run-over casualties, including 115 fatalities, could have been expected.[36]

[36] Statistics showing casualties to persons struck or run over by cars or locomotives at places other than highway grade crossings are not in the record. They were taken from Accident Bulletins Nos. 92 through 108, published by the Interstate Commerce Commission, covering the years 1923 through 1939. The data appear in Table No. 55 of each issue of the Accident Bulletin. They represent the "Grand total, nontrespassers and trespassers", killed and injured in "train-service" accidents from the above-described cause for railroads of all classes. Train-miles used to compute the rate of such accidents were taken from exhibits in the record. (R. 3300)

D. If Any Beneficial Effects with Respect to Slack-Action Casualties Can Be Attributed to the Arizona Train-Length Limitations, They Are Overwhelmingly Offset by the Injurious Effects With Respect to Much More Important Classes of Casualties.

We have shown that, at most, any beneficial effects upon slack-action casualties of train-length limitations are inconsequential; that such casualties are of relatively minor importance; and that train-length limitations substantially increase the danger of practically all other kinds of casualties.

Among such other kinds of casualties are those from grade-crossing accidents, which included on all railroads an average of 1,413 fatalities per year for the period 1935-1939, and those to persons struck or run over by trains and engines at places other than grade crossings, which included on all Class I railroads an average of 1,712 fatalities per year, for the same period. *In contrast, slack-action casualties to road freight conductors, brakemen, and flagmen, during this period on all Class I railroads in the United States included an average of only three fatalities per year.* The number of grade-crossing casualties, and struck-or-run-over casualties, increases in close relationship to the increase in the number of trains. The conclusion cannot be avoided that, if train-length limitations, like those in Arizona, had been in effect generally during the period 1935-1939, there would have been a large increase in fatalities and injuries. On the basis of figures, to which attention has been called, the additional fatalities would have amounted to more than 200 per year.

It should be said that railroad employees, as well as others, are subject to grade-crossing casualties and to casualties from being struck or run over. During the period 1935-1939, the average number of railroad employees killed per year in grade-crossing accidents in the United States

was 21, and the average number of employees killed per year by being struck-or-run-over was 141.[37]

E. The Bearing of the Safety Feature on This Case.

The findings and evidence show that considerations of safety afford no rational basis for the Arizona law and that the effects of the law have not been and would not be to reduce hazards but greatly to increase them. But this conclusion is not necessary to a judgment that that law is invalid as in conflict with the Commerce Clause. Under the doctrine of balancing interests, national and state, it is necessary to weigh the local benefits against the burden upon interstate commerce. The fact that a state law might have some beneficial relationship to safety is not enough, therefore, to establish its validity. The question is one of the relative weight of the competing factors. Thus, if the state benefits are of little consequence and the burden upon commerce is heavy, the state law falls. We have discussed in this section the alleged state benefits and in the next we shall discuss the burden on interstate commerce.

There is one other consideration to which reference should be made before leaving the safety feature. In the brief for the Southern Pacific (pp. 209-233) it is argued, and we think soundly, that the Arizona law is unconstitutional because it operates in a field which has been occupied by Congress as a result of legislation and as a result of administrative action by the Interstate Commerce Commission. There it is shown that federal action relating to train control has been extensive. The point we wish to make here is that this federal action is a factor for consideration, insofar as it has the effect of eliminating or minimizing any state need for, or benefit from, train limitation.

[37] Statistics showing fatalities to employees in grade-crossing and struck-or-run-over accidents are not in the record. They were taken from Accident Bulletin Nos. 104 through 108, published by the Interstate Commerce Commission, covering the years 1935 through 1939. The data appear in Table No. 55 of each issue of the Accident Bulletin.

even if it should be thought that it falls short of an "occupation of the field" in a technical sense.

It is not without interest and significance that the Federal Government and the State of Arizona have been guided by wholly different and opposing philosophies. The action of the Federal Government looks to progress in the art of railroad operation and to improving safety conditions by improving facilities and devices. The state action, on the contrary, seeks to accomplish its purpose by freezing railroad practices and preventing or impeding progress.

V.

THE BURDEN ON INTERSTATE COMMERCE RESULTING FROM THE ARIZONA LAW.

The burden on interstate commerce resulting from drastic state regulation of train lengths is due to the interferferences with, and obstructions to, railroad transportation caused by such limitations. It follows that the importance of railroad transportation to interstate commerce and to the national interest is a factor always to be borne in mind in considering the degree and extent of the burden on interstate commerce. Under another heading, we have already discussed the place occupied by the railroads, as carriers, in the national life.

If the states have authority to limit train lengths, as Arizona has attempted to do, they have authority to interfere directly with the physical operation of railroads in their conduct of interstate transportation, in such a way as to make such operation more hazardous, less efficient and more costly, and to threaten the adequacy of railroad service in periods of heavy traffic. They have authority to do all this in the face of the National Transportation Policy declared by Congress, which emphasizes the national interest in the safety, efficiency and economy of rail transportation, and in spite of the fact that no local, state interests of safety, or other state interests, are served.

In the preceding section we have dealt with the effect of train-length limitations, such as those prescribed in Arizona, upon the safety of train operations. In this section, we shall discuss briefly the adverse effect of limitations of this kind upon the economy and efficiency of railroad operation, the free flow of interstate commerce, and the adequacy of railroad service.

There are two approaches to the subject. In the first place, consideration must be given to the actual effects of the Arizona limitations as shown by the long experience of the Southern Pacific in its operation under those limitations. In the second place, consideration must be given to the experience of railroads generally, including the Southern Pacific, in operations elsewhere, which have not been hampered by these or similar limitations.

The obstructive and oppressive effects of the Arizona law upon the operations of the Southern Pacific Company are discussed at length in the brief filed on behalf of that company. (Volume I, pp. 15-27, 110-113, 156-160, 197-202; Volume II, pp. 49-69, 85-125.) There is, accordingly, no occasion for a detailed discussion here of the Arizona situation.

With reference to the burden imposed upon the Southern Pacific operations by the Arizona law, the trial court, in its memorandum opinion stated (R. 4048-9):

> "The record here also amply discloses that the law causes real interference with, and delay to, interstate commerce, practically to the extent that Arizona operations create a bottle-neck. Actually ninety-three per cent of the freight traffic and ninety-five per cent of the passenger business of the defendant in Arizona is interstate commerce. Furthermore, the law certainly imposes a great, substantial and wholly unreasonable burden of expense upon this interstate traffic. To hold in this case that interstate commerce was only incidentally or indirectly involved would be less than realistic, for the interference and regulation is *substantial, continuous, direct and unavoidable*; as is pointed out in detail in the findings of fact. What is even more serious from

the standpoint of those who seek to uphold the Act is its extra-territorial effect. The challenged law lays hands upon interstate commerce moving over defendant's lines long before it reaches the physical boundaries of Arizona, and continues directly to affect and regulate that commerce long after it has left Arizona. As a practical matter, it nearly controls the length of passenger trains from Los Angeles to El Paso, and of freight trains from Yuma to Lordsburg, the latter point being twenty-three miles East of the State line, and frequently on to El Paso, 171 miles beyond Arizona's boundary."

In its memorandum opinion, the trial court stated further (R. 4051):

"Also it is clear that the reason defendant is unable to effect improvement in the efficiency and economy of its freight-train operations in Arizona comparable to those achieved in neighboring states, or upon its system generally, is primarily due to the restrictions imposed by the Arizona law."

The following is quoted from the findings of fact of the trial court (R. 3953):

"The enforcement of the train-limit law against defendant results and will continue to result in delay to and interference with the handling and movement of defendant's interstate trains, both freight and passenger, operated in the affected territory, and with the transportation and movement of the interstate passengers, cars and commerce contained therein, both within and without the boundaries of Arizona.

Such delays and interferences arise and will continue to arise in the following ways: (1) interferences with and delays to cars and trains at terminals, (2) delays to individual cars, as distinguished from trains, at terminals and other stations, and (3) interferences with and delays to trains while on the line between terminals."

The trial court also found (R. 3961):

> "The effect of the aforesaid delays and interferences occasioned by the law are and will continue to be directly, substantially and seriously to impede the prompt and efficient handling of the interstate freight and passenger traffic carried in the trains operating over defendant's lines in the affected territory, and to hamper seriously, and in many cases to prevent, the on-time delivery of said traffic at destinations and/or points of interchange with defendant's connections."

There was a further finding of fact by the trial court that the expenses incurred by the Southern Pacific in performing transportation services (almost wholly interstate) were increased as a result of the requirements of the Arizona law by $394,900[38] per year, of which $94,600 was incurred outside of the state by reason of the extraterritorial operation of the law. (R. 3966-8) The added costs reflected in these figures resulted in large part from the necessity of running unnecessary additional trains and of performing unnecessary additional switching.

The lines of the Southern Pacific in Arizona, as well as those of other railroad companies operating in that state, are links in the national railroad transportation system. Approximately 93 per cent of the freight traffic and 95 per cent of the passenger traffic of the Southern Pacific in Arizona is moving in interstate commerce. Approximately 68 per cent of the freight traffic and 74 per cent of the passenger traffic is "overhead" or "bridge" traffic, that is to say, traffic which originates outside of the state and moves across the state to destinations beyond. (R. 3897-9) Thus, it will be seen that the additional costs of operation due to

[38] This estimate was based on operations in 1938, a year of very light traffic. In a year of heavier traffic, the cost would, of course, be greater. The Atchison, Topeka and Santa Fe Railway Company also is engaged in railroad operation in Arizona. In *Atchison, T. & S. F. Ry. Co. v. LaPrade*, 2 Fed. Supp. 855, 862, decided in 1933, it appeared that the Arizona law increased the expenses of that company by more than $600,000 per year.

the Arizona Train-Limit Law, regardless of where they are incurred, fall in very large part on those outside of the state.

Delays and congestions on the railroad lines within Arizona, or the affected territory, mean, of course, delays and congestions on every through railroad route of which these lines form a part. Such routes extend from coast to coast and, indeed, from every part of the United States to every other part of the United States. Increased cost of railroad transportation in Arizona results in increased cost of transportation over all routes passing through that state. If railroad transportation in Arizona is blocked, transportation over all routes which include Arizona lines is blocked.

For many years the Southern Pacific has followed the practice of long-train operation on its entire system, with the exception of its lines in Arizona and the adjacent affected territory. Approximately 27 per cent of the total number of freight trains run by this company, excluding its operations in Arizona, are more than 70 cars in length. In Nevada, where conditions are closely similar to those in Arizona, except in so far as they are affected in the latter state by the Train-Limit Law, more than 66 per cent of the freight trains operated by the Southern Pacific are long trains. The Southern Pacific also operates a substantial number of long passenger trains—trains in excess of 14 cars—on its lines which are not affected by the Arizona law. On some routes more than 43 per cent of the passenger trains are long trains. (R. 3915-6) Long trains would be operated in large numbers over the lines of the Southern Pacific in Arizona and the adjacent affected territory, except for the state law. Over the main line between Yuma and Lordsburg, where no long trains can be operated under the law, more than 80 per cent of the freight trains would be long trains but for the restrictions of the law. The average number of cars per train on this part of the line of the Southern Pacific was about 65 in 1938 under the restricted operation, but, in the absence of the state restriction, the average number of cars per train would have been 87. (R. 3962-3)

The Arizona law interferes with and delays the movement of interstate commerce in many ways. A long train approaching the state must be broken down to the statutory length when or before it reaches the state line. This involves extra switching, substantial delays to trains, and additional delays to cars which must be cut out of long trains for storage and movement in later trains. When short trains have crossed the State of Arizona they must be remade into long trains at the first available point at or beyond the state line in order to avoid the disadvantages of short-train operation. This also requires additional switching and results in new delays.

Long freight trains entering Arizona from the West are ordinarily broken down into short trains at the Yuma yards and the westbound short trains which have moved through Arizona ordinarily are remade at those yards into long trains for further movement.[39] A quite different situation exists, however, with respect to long trains approaching Arizona from the East and short trains leaving Arizona for movement eastward. There is no terminal at the Arizona-New Mexico state line where long trains can be broken down into short trains or short trains built up into long trains, and it is impracticable to construct such a terminal at that point. As a result, westbound long trains from the East must be broken down and remade into short trains, which meet the requirements of the Arizona law, at Lordsburg, New Mexico, 23 miles east of the state line or at some terminal still further east. Likewise, eastbound short trains which have moved through Arizona cannot be built up to long trains before they reach Lordsburg or some terminal further east. As a practical matter, most trains must be broken down or built up as far east as El Paso, Texas, 171 miles from the Arizona state line.

[39] By sufferance of the state the operations between the California-Arizona line and the Yuma yards, which are in Arizona a short distance from the line, have never been treated as within the purview of the law. (R. 4043)

The extent of the extraterritorial interference with train operation by the Arizona law is shown by a special study covering June and August, 1938. This study disclosed that 30 per cent of the freight trains on the Southern Pacific between Lordsburg, New Mexico, and El Paso, Texas, were long trains, whereas 74 per cent of the trains between these points would have been long trains except for the restrictions of the statute. The average number of cars in freight trains actually operated between these points was 68. In the absence of the train-length limitations, the average number of cars would have been 89. (R. 3962-3)

The extraterritorial operation of the Arizona law affects passenger trains as well as freight trains and to a greater degree. It controls the length of passenger trains to a large extent from Los Angeles to El Paso. (R. 4049)

The delays caused by the Arizona law include not only terminal delays of the character above described but also delays in road movement. These are caused by the necessity of running more trains than would be required in the absence of the prescribed limitations. A careful redispatching study developed that in the year 1938 the Southern Pacific was required to operate 4,304 additional freight trains (or 638,569 additional train miles) over its main line between Yuma and El Paso, solely because of the restrictions of the law. It was also required to operate additional passenger trains. The running of these additional trains caused 16,512 additional train meets and passes. The law compelled an increase in the total number of trains run (both freight and passenger) in the affected territory of about 28 per cent and an increase in the number of train meets and passes of about 63 per cent. (R. 3958, 3964-5, 4021, 4051)

The operation of more trains to carry a given volume of traffic requires more locomotives and more crews to man the trains. It limits road track capacity and yard capacity because of additional train interference on the road and additional switching in the yards. In periods of heavy traffic

this can lead to paralyzing congestions. Clearly, the Arizona train-length limitations not only obstruct and delay interstate transportation and make it more costly, but also, at times of greatest need, actually restrict and prevent such transportation.

This is not a mere theoretical or hypothetical danger. Since the beginning of the present war, all transcontinental lines operating through Arizona and Oklahoma (where there is a similar train-length limitation) have frequently been congested and it has been necessary to divert traffic from these lines to other transcontinental lines. *In the Matter of Service Order No. 85*, 256 I. C. C. 523, 535. This led the Interstate Commerce Commission, on September 11, 1942, to issue its Service Order No. 85 (7 Fed. Reg. 7258) suspending state train-length laws for the duration of the war emergency.[40] The power of the Commission to enter the order was questioned by certain railway labor organizations, which did not seek to raise any issue of fact. With the consent of those organizations, the question was submitted on briefs. The Secretary of War and the principal railroads serving Arizona and Oklahoma filed briefs in support of the order, and the Attorney General of Arizona, the Attorney General of Oklahoma, and certain railway labor organizations filed briefs challenging the order. The Commission issued a report in due course in which it refused to set aside its service order. *In the Matter of Service Order No. 85, supra*, 256 I. C. C. 523. In that report it was said, at page 524, that the order:

> "was designed to save manpower, motive power, engine-miles, and train-miles; to avoid delay in the movement of trains; to increase the efficient use of locomotives and cars and to augment the available supply thereof; and to relieve congestion at terminals caused by setting out and picking up cars on each side of the train-limit law States."

[40] The Commission acted under the emergency powers granted to it in the Car Service Provisions of the Interstate Commerce Act, as amended (Part I, Sec. 1 (10)-(17)); 49 U. S. C., Sec. 1 (10)-(17).

It was further said, at page 534:

> "* * * train-limit laws are not matters of local concern and the regulation of the number of cars which may be put in a train does infringe the national interest in maintaining the free flow of commerce under the present emergency war conditions."

At page 535, it was said:

> "Service Order No. 85 recites in its preamble that the train-limit laws in question during the present emergency may result in congestion of tracks and terminals, wasteful use of locomotives, and interference with the free flow of traffic necessary in the present emergency. This shows the national interest involved. The brief of the Secretary of War shows that many trains carrying important and urgently needed war goods and exceeding in length the maximum prescribed by certain State laws are constantly being moved from interior points to points of embarkation. It also shows that military necessity requires that units of troops should not be divided while being transported and that trains carrying prisoners of war should not be split.
>
> Since the beginning of the present war, all transcontinental railroad lines operating through Oklahoma and Arizona *have frequently been congested*, and it has been *necessary to reroute traffic from these lines* to other transcontinental routes." (Emphasis supplied.)

It is helpful to an understanding of the true character and potentiality of the power which is being claimed by Arizona to consider the results which would follow the exercise of like powers by other states. What would be the effect on the national railroad transportation system?

As previously stated, Class I railroads formulated and inaugurated, in the Spring of 1923, a continuing program to rehabilitate and modernize the national railroad plant. In keeping with that program, new and heavier locomotives and stronger cars were acquired; heavier rail was laid, curves and grades were reduced; bridges, trestles and culverts were rebuilt; signal systems were extended and improved and new safety devices were installed. In many

ways the national railroad plant was remodeled and improved to permit the use of trains of greater capacity and to bring about higher speeds between terminals. During the first year of this improvement program, 1923, more than a billion dollars of gross expenditures were made on capital account, and during the 17 years ending with 1939, the total was approximately nine billion dollars. (R. 187-190, 3934-6)

In connection with and as a result of this program of plant improvement, improved methods of operation were developed and adopted, including the practice of long-train operation. Long-train operation, both freight and passenger, is the standard practice which is followed today, as a customary and ordinary method of operation upon substantially every major railroad system throughout the United States. (R. 3937)

Since 1923, and coincident with development of long-train operation, there has been a marked improvement in the efficiency and economy of operations upon the railroads of the United States generally. The trial court found (R. 3940):

> "During the period since 1923, and coincident with the substantial increase in train lengths during that period, there has been a marked improvement in the efficiency and economy of operations upon the railroads of the United States generally."

In its memorandum opinion the trial court further stated (R. 4046):

> "As a part of its comparative showing as to costs and methods of operation, casualties, etc., the defendant presented the National picture of railroading by witnesses, who are outstanding in their respective fields, from sixteen of the Class I roads of the United States. • • • This evidence clearly establishes that 'long-train' operating practice is the customary and ordinary practice throughout the United States and *that improvements in efficiency, economy and safety are an accomplishment and necessary result of the adoption of that*

practice. This type of operation is unquestionably more economical and efficient than 'short-train' operations. Freight train expenses vary inversely with train length. Furthermore, long-train operations permit improved schedules and performance by elimination of short-train interference." (Emphasis supplied.)

In passing, we refer briefly to a few indicia of the progress which has been made in the economy and efficiency of railroad operation.

The average terminal-to-terminal speed of all freight trains on all Class I railroads, which was 11.1 miles per hour in 1922, increased steadily through the succeeding years until it reached 16.7 miles per hour in 1939, an improvement of 50.5 per cent. (R. 3940)

The average amount of freight train service produced per ton of fuel consumed on freight trains of Class I railroads increased during the same period by 44.4 per cent. In 1922, there were 10,750 gross ton-miles of transportation per ton of fuel consumed, and in 1939, 15,528 gross ton-miles. (R. 3941)

The average freight operating expense for all Class I railroads, per thousand revenue ton-miles, was $8.71 for the period 1922-1925 and $6.49 for the period 1936-1939, or 25.5 per cent less. The average passenger transportation expense, per passenger train car-mile, was 20.06 per cent lower in the period 1936-1939 than in the period 1922-1925. (R. 3941)

As a direct result of the increased efficiency and economy brought about by the aforesaid 1923 betterment program, including the development of long-train operation, the rates for freight and passenger transportation paid by the railroad patrons have shown continuously decreasing trends. The average revenue per ton-mile received by all Class I railroads in the United States was 1.177 cents in 1922 and 0.973 cents in 1939, a decrease of 17.4 per cent. The average revenue per passenger-mile, received by all Class I railroads in the United States, was 3.027 cents in

1922 and 1.840 cents in 1939, a decrease of 39.2 per cent. (R. 3943).

State train-length limitations, in so far as they might become applicable, would undo, in large part, the progress which has been made over the years in improving the safety and efficiency of railroad operation and would impair the use of facilities which have been provided at huge expense.

Moreover, and more important, the evil results would extend beyond delays to transportation, increased hazards, and the loss of efficiency and economy. The physical adequacy of the national railway system would be threatened. Paralyzing congestions would result during times when transportation demands were most urgent.

Congestion in railroad operation is a menacing evil and one which develops its own momentum. When a yard is overtaxed, switching operations become slower and more difficult and this in turn leads to greater congestion and a further slowing down in switching operations. When a railroad line becomes congested, the speed of trains is retarded and this leads to greater congestion. When one route is blocked, additional and perhaps intolerable burdens are thrown upon other routes.

It is difficult to conceive of a greater calamity than a collapse of transportation or a serious transportation shortage. The volume of railroad traffic has reached unprecedented levels during this war and the railroads have carried the load successfully, but there has been no surplus margin of capacity, and serious manpower and motive power problems have presented themselves.[41] Extensive

[41] 57th Annual Report of the Interstate Commerce Commission dated November 1, 1943, at page 1. Testimony of Col. J. Monroe Johnson, then Interstate Commerce Commissioner and now also Director, Office of Defense Transportation, at hearings before a Subcommittee of the Committee on Interstate Commerce, United States Senate, pursuant to S. Res. 185, 78th Congress (Jan. 5, 1944)—Printed Transcript of Hearings, Part 2, at page 284 *et seq.* Address of Honorable Joseph B. Eastman, then Director, Office of Defense Transportation, delivered Oct. 15, 1943, before the Seventh Annual meeting of the National Association of Shippers Advisory Boards. (Printed transcript "Proceedings" of the meeting, page 34.)

interferences with effective operating practices would have brought disaster.

We have had a practical demonstration of the effect of the Arizona and Oklahoma laws in a time of heavy traffic. The lines operating in those states "have been frequently congested, and it has been necessary to reroute traffic from these lines to other transcontinental routes." *In the Matter of Service Order No. 85*, 256 I. C. C. 523, 535. What would have happened when the routes through Arizona and Oklahoma became congested if other transcontinental routes had also been congested as a result of train-length limitations and had been unable to absorb the overflow?

The power of the Interstate Commerce Commission to suspend state limitations upon train length during emergencies, as it did in Service Order No. 85, is now under challenge by railway labor organizations in *Johnston* v. *United States*, pending in the United States District Court for the Western District of Oklahoma. Even if that power should be upheld, however, plainly it could not offer protection against or remedy for the injurious effects of state limitations of train length.

Long-train operation cannot be initiated successfully overnight. It depends upon suitable railroad plant and equipment, as well as upon freedom from statutory restrictions. Engines must be of sufficient power, and cars, bridges, and track structures of sufficient strength. Sidings must be of appropriate length, and turntables, roundhouses and repair facilities must be suitable. If train-length limitations were of widespread application, railroad plant and equipment would ultimately have to be conformed to such limitations in order to minimize wasteful use of facilities and to provide a plant designed to meet the conditions created by the state laws. Under such circumstances, the temporary lifting of state limitations during a period of emergency would necessarily have only a very limited effect. The physical limitations would control.

An example is afforded by this case. Because of the Arizona law, the sidings of the Southern Pacific in that state are long enough only for short trains and the locomotives assigned to service in that state are generally not such as would be appropriate for long-train operation. (R. 3947) These difficulties in Arizona can be and will be overcome by extending sidings, reassigning locomotives, and reconstructing turntables, roundhouses, and repair facilities, at a cost of some $1,352,272. But this will take time, as well as money. (R. 3948-9)

It will be realized at once that the task of converting the Southern Pacific facilities in Arizona to long-train operation, under existing conditions, would not be comparable, in difficulty or magnitude, with the task which would confront the railroads of the country if they should attempt to reestablish long-train operations after such operations had been prohibited by law and after their facilities and equipment had been accommodated to short-train operation.

VI.

THE REGULATION OF TRAIN LENGTH CANNOT BE SUBJECTED APPROPRIATELY TO THE DIVERSE REQUIREMENTS OF THE SEVERAL STATES.

State action affecting interstate commerce is not permissible when the nature of the subject matter regulated and the nature of the regulation demonstrate that "superior fitness and propriety" demand uniformity of control by a single authority rather than diversity of control by local authorities. The single control may take the form of affirmative regulation or it may take the form of lack of regulation. The question here is not whether Congress has acted or whether actual diversity has manifested itself in the action of different states. The question is simply whether or not the subject to be regulated and the character of regulation are such as require, when tested by the standard of superior fitness and propriety, that diverse and

possibly conflicting local commands be avoided in the national interest.

In applying this standard, there are many helpful guides. Is the subject matter to be regulated predominantly of national or of local concern? Would diversity of state regulation conflict with or unduly interfere with the National Transportation Policy or injuriously affect the national interest in commerce? Would the diversity of state requirements operate to burden interstate commerce or to obstruct its free flow? Would such state requirements interfere with the essential unity and continuity of interstate train operation? Would such diversity result in flagrant extraterritorial operation of state requirements and in inflicting on one state the unwise or dubious policy of another?

While the need for control by a single authority affords a separate and independent ground for holding a state statute invalid, it is ordinarily, as in the case at bar, associated with and interrelated with other grounds.

Diversity of the requirements of different states with respect to train length would add to the interferences with and obstructions to interstate transportation beyond the simple accumulation of such interferences and obstructions in the several states.[42] It would also accentuate the extraterritorial operation of the local mandates, and it would destroy or gravely impair the essential physical continuity of train operation, which is necessary in the national interest.

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[42] *In the Matter of Service Order No. 85*, 256 I. C. C. 523, 530-531, it was said:

> "If State laws limiting the number of cars in trains are to be held valid (a question we do not decide), it would be possible for each State to set a different number of cars as the maximum to be hauled in a train. A State might even limit the length of trains to one car, although such a law would be clearly arbitrary and unreasonable. Higher limits might be set by States and found reasonable, *but lack of uniformity would place a serious burden on interstate commerce.*" (Emphasis supplied.)

In the next section of this brief, dealing with "Controlling Constitutional Considerations," we shall discuss further the doctrine of uniform control by a single authority and shall refer to precedents and authorities, but it is our purpose at this stage merely to state the rule and to direct attention to certain facts which must serve as a background for its application.

If the states are possessed with power to regulate the length of trains, one may fix a limitation of 70 cars, another of 60 cars, and still another of 80 cars. The possibility of variety is endless. What would be the effect of such variety?

There is no occasion to repeat here what we have already said with respect to the predominant national concern in adequate and efficient transportation or what has been said with respect to the burdens and obstructions inflicted upon efficient railroad transportation by a single state train-limit law. We refer to them again, however, for the light they throw upon imperative considerations opposing diversity of control and regulation.

We have shown the serious interferences with railroad operation caused by the passing of a train from a state in which train length is not regulated to a state in which a maximum train length is prescribed, and by the passing of a train from a state in which a limitation prevails to a state in which no limitation is applicable. Interferences of the same kind would result whenever a train passed from one state in which a restriction obtained to another state in which a different restriction obtained. It would be necessary to break down long trains and build up short ones at the state boundaries, so far as possible, with attendant delays, extra switching, and other hardships to which we have referred, unless the most drastic limitation should be observed in all states through which the trains operate.

The nature and extent of the effects of the diversity of control over train length can be appraised only when it is remembered that the location of railroad lines has no relation whatever to political state lines, but has been dictated

by considerations of traffic and commerce and by considerations of topography. The lines of most railroads extend through a large number of states and often they cross and re-cross state boundaries. It is quite common for an important main line to include only a relatively small mileage in one state, or in each of a number of states. Railroad terminals and division points are not to be found on state lines, except in rare cases as a result of coincidence. They have been located, and have been long established, to meet the necessities of efficient railroad operation.

As illustrating what has been said in the next preceding paragraph, a few concrete examples may be helpful.

The Chicago, Milwaukee, St. Paul and Pacific Railroad, the Pennsylvania Railroad, and the Chicago Rock Island and Pacific Railway each operates in 14 states. The Illinois Central, the Baltimore and Ohio and the Union Pacific Railroad each operates in 13 states. The Southern Railway and the Atchison, Topeka and Santa Fe Railway each operates in 12 states. The Chicago, Burlington & Quincy Railroad operates in 11 states. The Southern Pacific Company, appellant herein, operates in 7 states. For the purposes of this paragraph the District of Columbia has been considered as a state.

The main line of the Pennsylvania between Washington and New York extends through 5 states and the District of Columbia, although the entire distance is only 225 miles. In New York the distance from the state line to the passenger station is only 1.1 miles, and in the District of Columbia the corresponding distance is only 4.4 miles. In Delaware there are only 23 miles of line and in Pennsylvania only 48.

The main line of the New York Central between New York and Chicago includes only a few miles in Illinois, (and this is true of all east-west railroads with their western termini in Chicago) and only 40 miles in Pennsylvania.

The main line of the Michigan Central (operated by the New York Central) between Chicago and Detroit includes only a few miles in Illinois and only about 40 miles in Indiana.

The main line of the Atchison, Topeka and Santa Fe between Chicago and the west coast includes only about 20 miles in Iowa.

The main line of the Kansas City Southern Railway from Kansas City, Missouri, to Port Arthur, Texas, affords an excellent illustration of a line which crosses and re-crosses state lines, as shown by the following table:

Main line of Kansas City Southern Ry. from Kansas City, Missouri, to Port Arthur, Texas.

From Kansas City, Mo. to Mo.-Kans. line	120.23	miles in Mo.
From Mo.-Kans. line to Kans.-Mo. line	18.39	miles in Kans.
From Kans.-Mo. line to Mo.-Ark. line	65.22	miles in Mo.
From Mo.-Ark. line to Ark.-Okla. line	28.83	miles in Ark.
From Ark.-Okla. line to Okla.-Ark. line	127.64	miles in Okla.
From Okla.-Ark. line to Ark.-Tex. line	118.76	miles in Ark.
From Ark.-Tex. line to Tex.-Ark. line	31.42	miles in Tex.
From Tex.-Ark. line to Ark.-La. line	6.42	miles in Ark.
From Ark.-La. line to La.-Tex. line	222.46	miles in La.
From La.-Tex. line to Port Arthur, Tex.	49.61	miles in Tex.
From Kansas City, Mo. to Port Arthur, Tex.	788.98	miles

Another illustration of the same kind is to be found in the main line of the Nashville, Chattanooga & St. Louis Railway between Nashville, Tennessee, and Atlanta, Georgia, as shown in the following table:

Main line of Nashville, Chattanooga & St. Louis Ry. from Nashville, Tennessee, to Atlanta, Georgia.

From Nashville, Tenn. to Tenn.-Ala. line	102.65	miles in Tenn.
From Tenn.-Ala. line to Ala.-Tenn. line	24.11	miles in Ala.
From Ala.-Tenn. line to Tenn.-Ga. line	13.43	miles in Tenn.
From Tenn.-Ga. line to Ga.-Tenn. line	1.71	miles in Ga.
From Ga.-Tenn. line to Tenn.-Ga. line	0.69	miles in Tenn.
From Tenn.-Ga. line to Ga.-Tenn. line	1.02	miles in Ga.
From Ga.-Tenn. line to Tenn.-Ga. line	23.53	miles in Tenn.
From Tenn.-Ga. line to Atlanta, Ga.	121.10	miles in Ga.
From Nashville, Tenn. to Atlanta, Ga.	288.24	miles

These examples leave no doubt that "superior fitness and propriety" preclude local state control of the length of interstate trains and require that such control be vested in a single authority. Any other conclusion is unrealistic and must ignore the essential conditions which control train operations.

Diverse state regulations would, in many instances and with respect to many routes, result in the application of the regulation of a particular state far more extensively in neighboring states than in the regulating state. Is one state empowered not only to place grievous burdens on interstate transportation, as conducted in other states as well as within its boundaries, but also to impose upon sister states, and not necessarily adjacent states only, its own peculiar views respecting safety, especially when such views are contrary to those prevailing in the Nation and will greatly increase the hazard of serious accidents, such as those occurring at highway-railroad grade crossings?

From what has been said it clearly appears that the limitation of train length by one state necessarily spreads its effects over conduct and standards in other states, not in a minimal fashion but in a substantial and extensive manner.

The lack of fitness and propriety of local control of train length can be appreciated vividly if we assume that the power here claimed by Arizona had been delegated by it to counties, municipalities, and villages to exercise as they might choose over transportation within their political areas. So far as matters really local are concerned, such local units of Government may properly be vested with the power of local control, as they often are. Yet, if under a broadly delegated power from the state to take action for the promotion of health and safety within their limits, they should venture to do what Arizona has done, it can not be conceived that anyone would have the hardihood to argue that such action was not obnoxious to the Commerce Clause.

While such a possibility may seem fanciful, it would, in numerous instances, be no more absurd in application than

the exercise of power by a state over train length. State lines, as dividing points for train operation, are hardly less arbitrary than county lines. As we have shown by examples, there are numerous cases in which that part of an important through railroad route which lies within a single state is much less in length than the distance across many a county. If diversity of regulation by counties would destroy essential unity and uniformity in train operation, so would diversity of regulation by states.

VII.

CONTROLLING CONSTITUTIONAL CONSIDERATIONS.

Under the various formulae which have expressed the underlying canons for determining the constitutional scope of state power over interstate commerce, the different questions which must be asked and answered as the basis of judgment in each particular case may from a practical standpoint be put as a single crucial question. This is whether the local end which the state law may be found to serve is a sufficient justification for the burden on and obstruction to commerce which the law imposes. These formulae, however expressed, are not self-executing. These questions, however framed, do not answer themselves. In each case the judicial duty can be performed only by consideration of the relevant facts in the situation which calls for judgment.

While the fundamental issue can be put as a single crucial question, the answer in each case depends upon the conclusions reached about practical considerations which by further questions can be put in sharper focus. This leads to narrower tests which are stated in various ways. In their application to some situations, they may be substantially the same test, with the differences of statement chosen for the aptness of each particular inquiry to special features of the combination of elements requiring adjudication.

With respect to other situations, the differently-stated tests may be more independent of each other, and the application of some one of them may be determinative of the issue. Nevertheless in any but the simplest circumstances, the canons of judgment to be invoked are bound to be interdependent and cooperating. Strands which may be separated for analysis are interwoven in reality with a cumulative strength beyond what they would have in isolation from each other.

The primary question, primary both in the time of its formulation by this Court and in its importance, is this. Is the enterprise which spans or embraces "more states than one," of the type which, if not "imperatively demanding a single uniform rule" (*Cooley* v. *Board of Port Wardens*, 12 How. 299, 319), clearly exemplifies the "superior fitness and propriety" (*Id.* at 320) of such a uniform rule rather than that of "different systems of regulation drawn from local knowledge and experience, and conformed to local wants"? If such is the nature of the subject with which the state law interferes, state power is excluded because the diverse commands of different states cannot yield a single uniform rule. In considering this, attention must be directed both to the type of enterprise being regulated and to the type of regulation involved. Moreover, in determining the superior necessity of a single uniform rule, whether of freedom or of some restriction, the most useful criterion is usually, if not always, an estimate of the adverse effects on the unitary national interest in the freedom of commerce, if this freedom is curtailed by barriers set up by each state according to some local preference. It is not to be forgotten that the advancement of this interest of national unity was the primary purpose of substituting the Constitution for the loose tie of the Articles of Confederation.

When the answer to this primary test is that the national interest in uniformity will be defeated or unduly embarrassed by subjection to the diverse regulations of different

states, then the state law must fail because the local end which it may be found to serve is not a sufficient justification for the burden on interstate commerce which the law imposes. This, however, is not the only situation in which state regulations of interstate commerce are unconstitutional. Even if the evils to commerce do not arise from diversity of state requirements but follow rather from the unjustified severity of the particular imposition with the possibility of cumulation by the like action of other states, the state law is unconstitutional unless it can be condoned because its service to a local need outweighs its injury to interstate commerce and to those who conduct it. While a judgment of the same relative character enters into the determination of the respective merits of uniformity or diversity of regulation, the comparison of benefit and burden is not confined to the solution of that issue. There are limits to the exercise of state power where state power is not wholly excluded. If every state imposed the same rule so that uniformity were achieved, state power would still be precluded when the disadvantage to commerce is without compensation in the advantage to some local interest of the state.

The relative weighing of state and national interests must necessarily vary with the different situations in which they conflict. In estimating the weight of the national interest, it is essential to bear in mind the authoritatively declared national policy toward that interest. This policy with respect to the national railroad system has been set forth in a preceding section of our brief. Similarly we have set forth the recognition by national authorities of the indispensability of the most efficient rail transportation which can be provided and of the effectiveness of the carriers in recent years in furnishing such transportation. No one doubts for a moment that here is a national interest of the first magnitude. Any state interference with that interest must face judgment in the light of the magnitude of national concern. It must face judgment in the light of

what Congress and the Interstate Commerce Commission have done to secure and promote the very interest adduced as a justification for the state law. The alleged state need cannot be estimated in a vacuum. In weighing the assumed local justification for the state prescription, consideration must be given to the situation if the state law is denied application. Existing national regulation is an element in weighing the extent and degree of the local need.

As in weighing the interest and need of the state, account must be taken of safeguards already established, so in weighing the burden on interstate commerce, account must be taken of the extent and the degree of indispensability of the enterprise on which the burden falls. Heavier burdens may be imposed on the trivial than on the essential. It is difficult to conceive of anything more essential to national welfare than expeditious and economical long range transportation. Impediments imposed by a single state adversely affect the interests of neighboring states. If one state is permitted to prefer its assumed interest to that of others and of the Nation, sister states may claim a corresponding preference. Variations in the preferences of different states with the possibility of conflict or opposition between them would burden the national interest in effective transportation even more than by mere cumulation. When such burdens fall on the physical operations of an articulated national railroad system, the weight of the burden is not confined to the stress at any single point of immediate impact. A clot in the arteries of commerce is not to be regarded as isolated and local in its incidence. It affects the whole system. Hence obstructions to the physical operations of railroads are grievous burdens on interstate commerce.

These comparisons of diversity with uniformity and of burden with benefit almost inescapably involve analysis and estimation of many, and often of all, of the same factual elements in any subject and any state regulation thereof. While the obstruction to commerce may be unjustifiable

even where diversity is permissible, the extent of the burden and the obstruction is often intimately related to the need of uniformity. This interrelation finds striking illustration in state laws imposing on interstate transportation an interference which is not confined to the transportation in the regulating state. If compliance with the law of one state necessarily controls conduct in another, the burden is thereby enhanced and the menace of diversity and the need for uniformity are correspondingly greater. Such effects are not confined to the application of state laws which in express terms forbid and penalize conduct in other states. They are equally inevitable if such extrastate conduct is compelled and coerced by the practicalities of railroad operation which do not permit change of methods at the precise imaginary line which is the political boundary between two states. The inescapable extraterritorial incidence of a state train-limit law adds greatly to the burden on commerce, to the evil of diversity, and to the imperative need of uniformity.

So interwoven are all these considerations in the case at bar and in numerous decisions on the same general problem that separate and independent treatment of each is not desirable and is hardly feasible without an excess of repetition. The case before us as well as most of those which have preceded is a composite of various elements which have their full significance only in their interrelation and their cumulation. The canons and rules that have been announced and applied in the precedents are approaches from different angles to the same goal. Different canons are applicable to the same facts. Their bearing in any case is dependent upon their application to the facts of that case. The bearing of the precedents is dependent upon a careful comparison between the facts to which they are applied and the facts in the case at bar. "Whether state action unduly impinges upon interstate commerce depends more and more upon the particularities of fact in individual cases." (Frankfurter, "Mr. Justice Brandeis and the Con-

stitution," XLV. Harvard L. Rev. 33, 77.) For this reason the familiar doctrinal generalities need to be supplemented by subordinate and ancillary canons that give more realistic guides for the process of applying them and for determining the bearing of the precedents on issues that differ from any previously adjudicated.

The recognition of this is manifest in the analysis given by the present Chief Justice in his dissenting opinion in *Di Santo* v. *Pennsylvania*, 273 U. S. 34, a case now overruled by *California* v. *Thompson*, 313 U. S. 109, in which there is amplification of the considerations set forth in the earlier opinion. Both cases involved state requirements on transportation agents which included the furnishing of a bond to guarantee faithful performance of contracts. In the *Di Santo* opinion, Mr. Justice Stone said:

> "As this Court has many times decided, the purpose of the commerce clause was not to preclude all state regulation of commerce crossing state lines, but to prevent discrimination and the erection of barriers or obstacles to the free flow of commerce, interstate or foreign.
>
> The recognition of the power of the states to regulate commerce within certain limits is a recognition that there are matters of local concern which may properly be subject to state regulation and which, because of their local character, as well as their number and diversity, can never be adequately dealt with by Congress. Such regulation, so long as it does not impede the free flow of commerce, may properly be and for the most part has been left to the states by the decisions of this Court.
>
> In this case the traditional test of the limit of state action by inquiring whether the interference with commerce is direct or indirect seems to me too mechanical, too uncertain in its application, and too remote from actualities, to be of value. In thus making use of the expressions, 'direct' and 'indirect interference' with commerce, we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached.

> It is difficult to say that such permitted interferences as those enumerated in Mr. Justice Brandeis' opinion are less direct than the interference prohibited here. But it seems clear that those interferences not deemed forbidden are to be sustained, not because the effect on commerce is nominally indirect, but because a consideration of all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect on the flow of commerce, lead to the conclusion that the regulation concerns interests peculiarly local and does not infringe the national interest in maintaining the freedom of commerce across state lines." (*Id.* at 43-44.)

Thus among the questions to be answered in the affirmative before the Arizona Train-Limit Law can be sustained are these: Is the limitation of train length a matter of local rather than of national concern? Are there peculiar local conditions in Arizona which require different treatment from that needed or given elsewhere? Are the number and the diversity of the problems of train length and of train operation generally such that these problems could "never be adequately dealt with by Congress"? And even if those questions could be answered in the affirmative, the state law could not be sustained unless these further questions could be answered in the negative: Does the Arizona Train-Limit Law erect "barriers or obstacles to the free flow of commerce"? Does it "infringe the national interest in maintaining the freedom of commerce across state lines"?

The answers to the questions so phrased are obvious. A state train-limit law erects "barriers or obstacles to the free flow of commerce" and "infringes the national interest in maintaining the freedom of commerce across state lines." The safety of train operation gives rise to no peculiar problems presented by the crossing of a state boundary. Such operation gives rise to no diversities that could be classified by states. No one can doubt that if in the view of Congress there existed any conditions which made limitation of train length desirable, the problems thus arising

could be dealt with adequately by Congress with the expert collaboration of the Interstate Commerce Commission.

Though the distinction between direct and indirect burdens on commerce cannot alone offer a single and conclusive canon of judgment, there are situations in which what may be called the directness of the burden or obstruction is an important factor. There is a decided difference between requiring security for the performance of a commercial undertaking (*Di Santo* v. *Pennsylvania*, 273 U. S. 34; *California* v. *Thompson*, 313 U. S. 109) and imposing a prohibition against bringing into the state a train which complies fully with the law of Congress and with the laws of neighboring states. Such a prohibition hits directly the physical operation of interstate trains. Even on its own highways, a state is not wholly free to limit the number of trucks and busses that shall be run in interstate commerce. (*Buck* v. *Kuykendall*, 267 U. S. 307; *Bush Co.* v. *Maloy*, 267 U. S. 317.) A direct obstruction to train service is in sharp contrast to some mere repercussion from a law dealing with something else than train service. It is in sharp contrast to requirements which, when complied with, leave the continuation of full service unfettered.

The contrasts between what the states may and may not do to interstate commerce are set forth again in the opinion of the Chief Justice in *California* v. *Thompson*, 313 U. S. 109. The Train-Limit Law can meet few, if any, of the conditions there listed as favoring the condonation of state regulations affecting interstate commerce. It does not deal with conduct "beyond the effective reach of Congressional action." Such conduct need not go largely unregulated "unless some measure of local control is permissible." The Train-Limit Law cannot be condoned because it does not involve "prohibiting interstate commerce or licensing it on conditions which restrict or obstruct it." It does not apply "to one who is not himself engaged in the transportation." It cannot be permitted because its requirement "is not conditioned upon any control or restriction of the

movement of the traffic interstate," or because "It does not appear that the regulation will operate to increase the cost of the transportation." Its character cannot be said to bring it within the class for which "there is wide scope for local regulation without impairing the uniformity of control of the national commerce in matters of national concern and without materially obstructing the free flow of commerce which were the principal objects sought to be secured by the Commerce Clause."

We do not contend that no state regulation of interstate commerce can be permitted unless it meets all conditions which cumulatively have been the basis of sanctioning the application of some other state statute. Nevertheless these recitals of types of state statutes and of situations and effects which do not run counter to "the principal objects sought to be secured by the Commerce Clause" are clear affirmations of what those objects are. The validity of a state train-limit law is to be tested by the extent and degree of its consistency or inconsistency with those objects. It is to be tested by the extent and degree of its consistency or inconsistency with the national policy toward transportation declared by Congress and advanced by various provisions of its statutes. If conformity with a declared national policy militates in favor of a state statute (*Parker* v. *Brown*, 317 U. S. 341), nonconformity to such a policy, when manifestly it impairs efficient transportation service, discourages improvement of facilities and denies the benefits of improvements already made, should certainly tip the scales against a statute offending in these various particulars.

It is largely because of the absence of state endeavors to impose any serious obstructions to efficient train operation that the considerations militating against the validity of restrictions in that field appear chiefly in distinctions drawn in the opinions of this Court in sanctioning moderate or justified regulations of other matters. The considerations which determine judgment are set forth and applied in the

analysis by Mr. Chief Justice Stone in *S. C. Hwy. Dept.* v. *Barnwell Bros.*, 303 U. S. 177. In sanctioning a state limitation on the size and weight of trucks on the public highways provided and maintained by the state, emphasis was placed on the difference between state power over such highways and state power over railroads. Both the proprietary power over the highways and the dominantly local interest in their use justify the exercise of a state control over them which is much greater than any state power applicable to railroads:

> "Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse.
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> . . . . . .
>
> With respect to the extent and nature of the local interests to be protected and the unavoidable effect upon interstate and intrastate commerce alike, regulations of the use of the highways are akin to local regulation of rivers, harbors, piers and docks, quarantine regulations, and game laws, which, Congress not acting, have been sustained even though they materially interfere with interstate commerce." (303 U. S. at 187-188.)

The essentially local nature of highway regulation is indicated by the great diversity in highway conditions. This is diversity within a single state and not merely diversity between states. Supersession of state power over the use

of the facilities which the state furnishes is hardly conceivable. To deprive the state of power over the weights and sizes of trucks would leave the highways largely subject to the uncontrolled choice of the users of them. A state train-limit law is not for the protection of facilities afforded by the state. It is not regulation of the right-of-way except as it adversely affects its use by equipment already under various national prescriptions to ensure the safety of operations, and as it increases the number of all types of accident that inevitably are the result of an increased number of trains.

The safeguard against abuse of a power on the part of the state to limit the size and weight of trucks is found in the fact that the regulations hit large numbers of resident truck owners and intrastate shippers whose interest in moderation will be a factor in legislative deliberations. This is without parallel in a law limiting train length where the interests adversely affected are so largely those of interstate railroads and extrastate shippers and consignees. Unlike large capacity trucks which are as serviceable in short local transport from distributor to retailer, from factory to freight station, as in long interstate operations, long trains are a special and compelling need of nationwide interstate carriage. In its effect on shippers and consignees, restriction of train length bears most heavily on those in other states. Enterprise in intermediate or "bridge" states suffers little, if any, compared with enterprise in terminal states. Thus the adverse effect on local interests of a train-limit law in a "bridge" state is not such as to afford the safeguards against abuse of power on which the opinion in the *Barnwell Brothers* case in part relies.

Thus both in its burden on extrastate operations and in the fact that those most adversely affected are without the political participation and representation whereby a moderating influence might be directed toward mitigating the severity of local restrictions, the Train-Limit Law is obnoxious to the condemnatory canons recognized in the *Barn-*

well Brothers case, and belongs to the class of statutes denied application to interstate transportation, which the opinion in the *Barnwell Brothers* case summarizes by saying:

> "The commerce clause, by its own force, prohibits discrimination against interstate commerce, whatever its form or method, and the decisions of this Court have recognized that there is scope for its like operation when state legislation nominally of local concern is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state. * * * It was to end these practices that the commerce clause was adopted. * * * The commerce clause has also been thought to set its own limitation upon state control of interstate rail carriers so as to preclude the subordination of the efficiency and convenience of interstate traffic to local service requirements." (303 U. S. 185-186.)

In further review of fundamental considerations which militate against the application of state power to interstate commerce, this same opinion adds:

> "State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to impinge upon the constitutional prohibition even though Congress has not acted. [Citations omitted.]
>
> Underlying the stated rule has been the thought, often expressed in judicial opinion, that when the regulation is of such a character that its burden falls principally upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state." [Citations omitted.] (303 U. S. pp. 184-185, note 2.)

Even state power over state-owned and state-maintained highways is not sufficiently strong to permit a state to re-

quire a certificate of convenience and necessity to operate interstate trucks and busses. (*Buck* v. *Kuykendall*, 267 U. S. 307; *Bush Co.* v. *Maloy*, 267 U. S. 317.) The purpose of the legislation condemned in the cases cited was so to restrict the number of entrants into the carrying enterprise as to encourage the development of service and facilities by those already established therein and to protect them from such severe competition as would threaten their ability to continue to serve. The state regulation, though limiting the number of those who could engage in the service, was designed for the promotion of adequate and effective service. Nevertheless, since the subject dealt with was interstate transportation, it was held that it was national in character and that state restrictive action was excluded notwithstanding the proprietorship of the state over its own highways. A state train-limit law, instead of promoting adequate and effective train service, obstructs and delays it and increases its cost. Transportation by rail is certainly more distinctly national in character than is transportation by truck, and therefore has a correspondingly stronger constitutional protection against state interferences with physical operations.

Because of the physical unity of railroad operations from state to state, any state law which breaks that unity is in sharp contrast to laws which leave it unimpaired. The essentially local matters which the states may control and the protective regulations which they may apply are those which involve no such material physical disturbance to the commerce between the states. Such are the matters which permit of diversity of regulation by the several states without impairment of harmony among the states. There are problems of protection against deceit and fraud and harmful substances and pecuniary loss which are peculiarly the problems of terminal states. Such are the matters which can fairly be deemed of special local concern over which state regulatory power is permissible so long as the protective prescriptions of the state are as local in application

as the malady they seek to relieve. No such exclusively or dominantly local considerations can be adduced to justify a requirement by an intermediate state that interstate trains must be broken in two before they may enter.

In our constitutional federalism it is fundamental that it is Congress and not the states which has power over interstate commerce *because* it is interstate commerce. Such power as the states enjoy over interstate commerce derives *aliunde*, and the fact that interstate commerce is thereby regulated is a hurdle or barrier rather than a justification. The judgment as to the height of the barrier and as to the desirability of being permitted to surmount it is not a judgment which the state is free to make as it chooses. When there is a conflict between the state's power in its reserved field and the power delegated to the Nation, the line of demarcation is to be drawn by national and not by state authority. Only when a state is confining itself to the legislative realm which is exclusively its own can it claim judicial tolerance toward its supposed knowledge of local conditions and its choice of policy. When it leaves its exclusive province, its preference to favor what it conceives to be its local interest in disregard of consequent burdens and impediments suffered by the commerce of the Nation must submit itself to the considered judgment of the judicial authority of the Nation.

The controversy now in issue is to be determined in the light of the same standards of judgment which this Court has heretofore announced and applied. Emphasis is here placed on these standards because, since "decision depends * * * upon the particularities of fact in individual cases", and these particularities have so little in common with each other, there may be for a novel issue no close parallel in the precedents. It may be said with confidence that no such serious physical obstruction to interstate transportation as is here involved has ever been sanctioned and that much less serious interferences and burdens have

been condemned. Among the relatively lighter burdens that have been prevented by judicial interposition is that involved in seeking to compel carriers to fight lawsuits in a forum which has no adequate relationship to the parties or to the cause of action. In condemning such an exercise of state authority in *Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312 at p. 317, this Court summarized the national interests thus adversely affected as follows:

> "The public and the carriers are alike interested in maintaining adequate, uninterrupted transportation service at reasonable cost. This common interest is emphasized by Transportation Act, 1920, which authorizes rate increases necessary to ensure to carriers efficiently operated a fair return on property devoted to the public use. See *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563; *New England Divisions Case*, 261 U. S. 184. Avoidance of waste in interstate transportation as well as maintenance of service, has become a direct concern of the public."

From a practical standpoint, what the state sought to achieve and was prevented from achieving in *Kansas Southern Ry.* v. *Kaw Valley Dist.*, 233 U. S. 75, would have been a less serious burden on commerce and a less serious obstruction to interstate transportation than are the results of a state train-limit law. In that case the state sought to require the railroad to elevate bridges over a river in order to leave more room for flood waters to flow below. However, since the regulation of the height of bridges was by Congress delegated to the Secretary of War, the state supreme court sanctioned the order and this Court condemned it, not as one to elevate the bridges, but as one "to remove the bridges as they stand." (*Id.* at 78.) Such a command, independently considered, was one to break the railroad in two, which is a more serious interference with interstate transportation than a requirement to break all long trains in two. Its condemnation by this Court is a precedent against serious state obstructions to

interstate commerce, but the particular obstruction was so extreme that we can invoke the case in its legal aspects only as a bench mark. Had not state power to order the elevation of the bridges been precluded by the authority vested in the Secretary of War, the extent to which the state might go would have turned on issues of degree. *State of Pennsylvania* v. *The Wheeling & Bridge Co., et al.*, 13 How. 518; *Escanaba Co.* v. *Chicago*, 107 U. S. 678. So must the question before us turn on issues of degree.

The interrelation between train operations in local service with those in interstate service is the underlying basis of *Missouri, Kans. & Tex. Ry. Co.* v. *Texas*, 245 U. S. 484, which condemned a state law requiring passenger trains to leave on scheduled time, and of *St. Louis S. W. Ry.* v. *Arkansas*, 217 U. S. 136, which condemned a state statute and orders issued thereunder which required the furnishing of cars to shippers under specified conditions. Compliance with such train-service and car-service commands had its forbidden effect on interstate commerce because obedience, as does obedience to a train-limit law, would inevitably disturb operations in another state. In the latter case Mr. Justice White said:

> "Coming to the merits, we think it needs but statement to demonstrate that the ruling of the court below involved necessarily the assertion of power in the State to absolutely forbid the efficacious carrying on of interstate commerce, or, what is equivalent thereto, to cause the right to efficiently conduct such commerce to depend upon the willingness of the company to be subjected to enormous pecuniary penalties as a condition of the exercise of the right." (217 U. S. at 149.)

So far as we are aware, the only decisions of this Court which have sanctioned the application to interstate commerce of state laws directly imposing delays in train service are those sustaining the Georgia suspension of Sunday labor in *Hennington* v. *Georgia*, 163 U. S. 299, and sustaining statutes or administrative orders requiring the slowing down of trains at crossings and the furnishing of

train service to local stations. The considerations underlying Sunday observance laws are of an order which has no counterpart in a train-limit law. The decisions on curbing speed at crossings turn on questions of degree. The very statute sustained in *Southern Railway Co.* v. *King*, 217 U. S. 524, in the absence of facts showing an unreasonable burden on train operation, was denied application in *Seaboard Air Line Ry.* v. *Blackwell*, 244 U. S. 310, when an unreasonable burden was found on the basis of facts conceded by demurrer. This latter case is cited in the *Barnwell Brothers* case in support of the statement that "an unnecessarily harsh restriction, even though it is in the interest of safety, has been held to be unconstitutional." (303 U. S. 186-187, note 4.)

Statutes and commission orders compelling train service at local stations are of two main types. One merely requires that the service be furnished and can be satisfied by putting on additional local trains. The other compels service from interstate trains. The enforceability of either type depends upon whether the need for additional local service justifies the burden on commerce. The fact that the carrier has an option to put on additional local trains rather than to stop interstate trains does not foreclose inquiry or determine the answer. "Undoubtedly the alternative can be required, but only if the local facilities be inadequate. In other words, to justify the requirement the local conditions must justify the extra facility." So it was declared in *Chi. B. & Q. Ry.* v. *Wisconsin R. R. Com.*, 237 U. S. 220, 231, which held such an alternative order invalid.

Other statutes or orders have attempted to compel all trains to stop at a given station, as that condemned in *Illinois Central Railroad Co.* v. *Illinois*, 163 U. S. 142, or to compel all regular passenger trains to stop at county seats, as that condemned in *Cleveland &c Ry. Co.* v. *Illinois*, 177 U. S. 514, or to stop at junction points for service to passengers changing to or from branch lines, as that condemned

in *Herndon* v. *Chi. Rock Island & Pac. Ry.*, 218 U. S. 135, or they may apply to particular trains, as those condemned in *Atlantic Coast Line* v. *Wharton*, 207 U. S. 328; *Mississippi R. R. Com.* v. *Illinois Cent. R. R.*, 203 U. S. 335; *St. Louis & S. F. Ry.* v. *Pub. Serv. Comm.*, 254 U. S. 535; and *St. L.-S. F. Ry.* v. *Pub. Serv. Comm.*, 261 U. S. 369. In this latter case Mr. Justice McKenna, after quoting from an earlier opinion to the effect that it is for the Supreme Court to determine "the fact of local facilities", added that "There is, however, no inevitable test of the instances; the facts in each case must be considered." (261 U. S., at 371.) These facts deal with the adequacy of local facilities on the one hand, and the interruptions and delays to interstate service on the other.

In this comparison, some orders are sanctioned and others are condemned. As Mr. Justice Brown puts the issue in *Cleveland etc. Ry.* v. *Illinois*, *supra* (177 U. S. 514, 518):

> "Several acts in *pari materia* with the one under consideration have been before this court, and have been approved or disapproved as they have seemed reasonable or unreasonable, or bore more or less heavily upon the power of railways to regulate their trains in the respective and sometimes conflicting interests of local and through traffic."

Of the interests of the public and of the carriers adversely affected by unreasonable and excessive slowing down of passenger train service, Mr. Justice Brown adds:

> "We are not obliged to shut our eyes to the fact that competition among railways for through passenger traffic has become very spirited, and we think they have a right to demand that they shall not be unnecessarily hampered in their efforts to obtain a share of such traffic. It is evident, however, that neither the greater safety of their tracks, the superior comfort of their coaches or sleeping berths or the excellence of their tables would insure them such share, if they were unable to compete with their rivals in the matter of

> time. The great efforts of modern engineering have been directed to combining safety with the greatest possible speed in transportation, both by land and water. The public demand this; the railway and steamship companies are anxious in their own interests to furnish it, and local legislation ought not to stand in the way of it." (*Id.* 522.)

The demand and need for speed apply to freight trains as well as to passenger trains. Certainly even more applicable to a train-limit law than to a law requiring service at designated local stations is the further judgment of the Court as expressed by Mr. Justice Brown on the extraterritorial application of the statute there before it:

> "While the statute in question is operative only in the State of Illinois, it is obnoxious to the criticism made of the Louisiana statute in *Hall* v. *DeCuir*, 95 U. S. 485, that 'while it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. * * * If each State was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship.'" (*Id.* at 522.)

A state law which cannot be complied with except by conduct in another state is a more serious burden on interstate transportation than one which merely causes delay in reaching another state. A statute which forbids a widely-approved method of conducting interstate transportation is more of an obstruction to interstate commerce than one which merely requires interstate trains to add a local service by stopping at a local station. Such obstructions to interstate transportation fall on the shoulders of shippers and consignees throughout the country, with repercussions on all who are dependent on the product carried. Laws imposing such obstructions are in striking contrast and opposition to laws which facilitate interstate commerce by requiring qualified and sufficient operatives.

and adequate headlights or by forbidding heating appliances capable of starting fires in passenger cars on normal trips as well as in contingencies of collision or derailment.

State laws condemned because of their extraterritorial impact are not confined to laws which actually command or forbid conduct in other states. The steamboat regulation condemned in *Hall* v. *DeCuir*, 95 U. S. 485, did not command any action outside the state. It merely compelled it if the statute were to be complied with within the state. As Mr. Chief Justice Waite pointed out:

> "While it purports only to control the carrier when engaged within the State, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage." (95 U. S. 489.)

While in *Wabash &c Railway Co.* v. *Illinois*, 118 U. S. 557, it was only because of conduct in Illinois that the carrier came within the terms of the state statute, the interstate transportation involved was said to be a unit and Illinois was denied the power to regulate the charge therefor, although the discrimination involved in the violation of its long-and-short-haul law was between two points in Illinois. After quoting from *Hall* v. *DeCuir*, *supra*, Mr. Justice Miller said:

> "The applicability of this language to the case now under consideration, of a continuous transportation of goods from New York to Central Illinois, or from the latter to New York, is obvious, and it is not easy to see how any distinction can be made. Whatever may be the instrumentalities by which this transportation from the one point to the other is effected, it is but one voyage, as much so as that of the steamboat on the Mississippi River. It is not the railroads themselves that are regulated by this act of the Illinois Legislature, so much as the charge for transportation, and, in language just cited, if each one of the States through whose territories these goods are transported can fix its own rules for prices, for modes of transit, for times and modes of delivery, and all the other incidents of

transportation to which the word 'regulation' can be applied, it is readily seen that the embarrassments upon interstate transportation, as an element of interstate commerce, might be too oppressive to be submitted to." (118 U. S. at 572.)

The vice of extraterritoriality was the essential basis of the decision in *Baldwin* v. *G. A. F. Seelig*, 294 U. S. 511, which held that a state may not forbid the local sale in less than the original package of milk purchased in other states at a price less than the regulated price to be paid to producers in the regulating state. New York did not punish any one for acts in Vermont nor dictate any conduct in Vermont. It admitted Vermont milk for local sales in New York on the same basis on which it permitted the sale of New York milk. It imposed no discrimination on the differentiating factor of state lines or of interstate commerce. It merely made conduct that was wholly lawful in the state of its occurrence a ground for denying a local market within its own borders. Similarly a state train-limit law has the mischief of spreading the practical effects of its prescription across its borders into neighboring states and requiring, even though not commanding, compliance there with the dictate which in terms is applicable only within its territory. Still more widespread are the practical effects of such a law on all enterprise in the country which would otherwise enjoy advantages of speedier and less costly interstate transportation service.

Even where there is no physical obstruction to interstate transportation, states are forbidden to extend their powers in practical effect beyond their borders to the prejudice of interstate carriers. Before Congress enacted provisions with respect to the charges of telegraph companies for the transmission of interstate messages, the application of state laws of liability was restricted to defaults occurring within the state. The state of destination could apply its rule of damages for defaults in delivery (*Western Union Telegraph Co.* v. *James*, 162 U. S. 650), but the state of

origin could not (*W. U. Telegraph Co.* v. *Pendleton*, 122 U. S. 347). In the *James* case, as noted in *West. Un. Tel. Co.* v. *Milling Co.*, 218 U. S. 406, at 420,

> "The principle determining the validity of the respective statutes was declared to be whether they could be 'fully carried out and obeyed without in any manner affecting the conduct of the company with regard to the performance of its duties in other States' ".

If it should be suggested that from some standpoints there is a technical legal distinction between dictating or penalizing conduct in other states and imposing for conduct within the state a requirement that can be complied with only by conforming thereto in other states, this cannot obscure the fact that, from a practical standpoint, what is coerced without being commanded may have the more disruptive effect on interstate commerce. This is particularly true when what is disrupted is such a physical unity as railroad transportation through intervening states between points of origin and of destination in widely separated states. Only in a few sporadic instances would there be a failure in delivery of an interstate message which would give occasion to invoke the statute of the state of origin as a basis of liability. The Train-Limit Law of Arizona by its necessary operation has extraterritorial effect whenever it applies to an interstate train. This extraterritorial effect is not only on the composition of trains in bordering states but on the efficiency and cost of service of transportation through many states. Looking at commerce among the states as a "practical conception" and exercising a practical judgment, we must recognize that Arizona undertakes to project her power beyond her borders by the necessary operation of her Train-Limit Law, and far more seriously than does a state undertaking to penalize delay in delivering a message in another state.

The same vice of extraterritoriality in the practical, though not in the legal, sense is the basis of the application of the canon of *forum non conveniens* to protect interstate

carriers from subjection to suit on causes of action which by reason of the locus of the transaction and the residence and activities of the parties are deemed to be unduly alien to the forum. (*Davis* v. *Farmers Co-operative Co.*, 262 U. S. 312; *Michigan Central* v. *Mix*, 278 U. S. 492; *Atchison Ry. Co.* v. *Wells*, 265 U. S. 101; *Denver & R. G. W. R. Co.* v. *Terte*, 284 U. S. 284.) In the territorial sense courts have jurisdiction over transitory causes of action, and the cases in which the exercise of this jurisdiction is denied do not involve issues of the application of the law of a sister state. The principle of the cases is that it is an undue burden on interstate commerce to compel a carrier to defend lawsuits in a jurisdiction without a justifiable relationship to the parties or to the cause of action. Such impediments to the efficient conduct of commerce are sporadic and minimal compared with the impediments to interstate transportation both within and without the state which inexorably result from obedience to a state train-limit law.

The considerations which determine whether the suit is alien to the forum are considerations of degree, as are those throughout the law of state burdens on interstate commerce. This, it is recognized, is true even with respect to the extraterritorial repercussions of a state regulation of the composition of trains. "Local climatic conditions" and "hazards created by the particular local physical structures" may justify a state order to provide cabooses in switching operations in terminal yards located within the state even though the terminal services extend to a point on the near border of an adjoining state (*Terminal Assn.* v. *Trainmen*, 318 U. S. 1), while more onerous and less justifiable requirements on a street car line, as recognized in the *Terminal* case, would exceed a state's power. *South Covington Ry.* v. *Covington*, 235 U. S. 537. The fact that these two cases fall on different sides of the line establishes that the line is there and must be drawn in each case upon a consideration of all the circumstances.

The conditions faced by trainmen in the switching operations of the Terminal Railroad Association of St. Louis, if they must ride on the tops and sides of cars in all kinds of weather and with the hazards of structures along and over the tracks, are so different from the conditions faced by trainmen who ride in a caboose at the end of trains of more than seventy cars that from a practical standpoint they are not comparable. Equally remote from anything approaching comparability are the burdens or the extraterritorial effects of continuing a caboose across a boundary river and the burdens and extraterritorial effects of a state train-limit law. Such wide differences and others even more serious, it is submitted, inevitably call for a difference of judgment if the principle of relative benefit and burden which runs through all the cases is to find application here.

The concern of the Commerce Clause with the inevitable extraterritorial effects of the operation of a state train-limit law is not confined to the resulting burden and confusion on the physical operations of the carriers. It extends to the relations between the states in the federal system. No state is entitled to impose its policy on its neighbors where their concern is as great as that of the one which would set a standard not only for itself but for others. The overwhelming majority of the states have positively rejected or have failed to adopt the idea of Arizona with respect to long-train operation. They have preferred such operation to the imposition of an arbitrary limit. The advantages accruing to safety from the reduction in the number of trains and train operations, as established by the record here, are impelling considerations in favor of such a preference. States which feel the force of such considerations are entitled to their choice in leaving train operations within their borders to the standard methods obtaining generally throughout the country. This choice is foreclosed if such standard methods must be departed from because of the inescapable necessity of running more

trains for a shorter or longer part of the route within the state in order to comply with the conditions set by barriers at the boundary of a neighboring state.

Any reliance by the state on the precedents which have permitted the application of so-called "full-crew" laws to interstate trains (*St. L. & Iron Mtn. Ry.* v. *Arkansas*, 240 U. S. 518; *Chicago, R. I. & Pac. Ry. Co.* v. *Arkansas*, 219 U. S. 453; *Missouri Pacific R. Co.* v. *Norwood*, 283 U. S. 249) neglects the vital distinction between the effect on transportation of such laws and that of a train-limit law. We have no inclination to minimize the serious financial burdens imposed by a so-called "full-crew" law or to accept that, as a practical matter, the considerations of safety advanced in its support are sufficient to warrant those burdens. A fuller presentation of all the factual elements than has heretofore been given to this Court might conceivably invite the same reconsideration as was given to the effects of the law requiring the drastic slowing down of trains at highway crossings. (See *Southern Ry.* v. *King* and *Seaboard Air Line Ry.* v. *Blackwell*, *supra*.) However that may be, a law prescribing an increase in the number of operatives is not an obstruction to physical operation of trains.

In contrast with a train-limit law, a full-crew law deals not with any physical characteristics of trains but with the number of the crew to operate them. It adds no other expense to operations than the wages of the extra employees. It has no extraterritorial operation beyond that incident to picking up and dropping the additional employees at the nearest stations or division points outside the state. It involves no extra switching and incident delays. It breaks no trains and leaves no cars standing on the track. It does not prevent the use of facilities to their best advantage. It involves no waste of expensive equipment and construction. It causes no delay between terminal and terminal, between division point and division point. It upsets no schedules. It does not multiply the

number of meets and passes, either within or without the state. It adds no hazards to other trains or to persons on highways which cross the tracks. It does not discourage improvement of structure and equipment to facilitate service and promote safety. It does not delay or interfere with the movement of persons or goods in interstate commerce. It does not lessen the carrying capacity of the railroad facilities and threaten the adequacy of the railroads to meet transportation requirements in times of heavy traffic.

In all these respects a train-limit law differs from a full-crew law. A train-limit law dictates the physical makeup of interstate trains. It blocks the entry from without the state of trains lawful under the legislation of Congress and of neighboring states, of trains consisting of cars complying with detailed specifications set forth in orders of the Interstate Commerce Commission under authority delegated by Congress. It increases the hazards of train operation by multiplying the number of trains, the number of meets and passes, the number of couplings and uncouplings of cars and locomotives, the number of fatalities at highway crossings. The only adverse effect on safety which can be caused by a full-crew law is that more employees may be affected by some single accident. A train-limit law multiplies the number of accidents and correspondingly both the number and the variety of the persons injured by them. Despite great improvement achieved by the railroads in recent years in the reduction of the accident rate, accidents must still occur when human beings operate trains. The fewer the trains needed to carry the commerce of the country, the fewer must be the number of accidents.

Quite aside from the increase in physical hazards caused by a train-limit law as contrasted with a full-crew law, there is another distinction equally vital. A regulation of physical operations deals with a subject more completely and exclusively national in character than a regulation con-

fined to the number of personnel. This is a fundamental difference from the standpoint of the obstruction and disorder which would be inflicted by diversities and contradictions in the regulations of different states. Checkerboard variation in permissible length of trains, with the alternating areas bounded only by political lines which have no natural relation to the conditions or the needs of transcontinental railroad operation, is obviously fatal to the desirable operation of a national railroad system on which the welfare of the Nation depends. The subject on which a train-limit law impinges is so controllingly national in character that, as the cases and the opinions make clear, if any restriction at all is needed, it should be embodied in a single uniform rule prescribed and administered by a single hand.

The contrast between a train-limit law and a full-crew law is reinforced by a consideration of the precedents invoked in the first full-crew case. The Court clearly adjudged the burden of the full-crew law to be a minimal one, so far as its obstruction to train operations is concerned, when it classed it with the group of laws requiring the licensing of engineers to guard against those of reckless or intemperate habits (*Smith* v. *Alabama*, 124 U. S. 465) or afflicted with color blindness (*Nashville, &c Railway* v. *Alabama*, 128 U. S. 96), and forbidding the use of stoves inside passenger cars except in emergencies or when the car is standing still (*N. Y., N. H. and H. Railroad* v. *New York*, 165 U. S. 628). Compliance with such laws, like compliance with a full-crew law which is grouped with them, leaves the efficiency and economy of interstate railroad operation free from any such invasions as that projected by a train-limit law. Similarly, a requirement of adequate headlights on locomotives (*Atlantic Coast Line* v. *Georgia*, 234 U. S. 280) has no obstructive effect on efficient transportation and has the special local justification of safeguarding the approaches at highway crossings—a result quite the opposite from that ensuing from an enforced

increase in the number of trains needed to carry the same volume of traffic.

We might multiply indefinitely the references to precedents which, on the issue whether state interferences with interstate commerce are moderate or excessive, have found some on one side of the line and others on the other. We have confined ourselves to those which seem to us to involve subject matters most nearly analogous to the one at bar. Since each case must turn on the particularities of its own special facts, we submit the issue here on the basis of the facts established by the findings, recorded in official reports, and known to this Court from experience and familiar sources of which it may take judicial notice. We can find no obstruction to interstate commerce that has been sanctioned because of so illusory a local advantage. We can find few cases in which so serious an interference with a vital national interest has been involved and none in which it has been sustained.

This case, we believe, rests solidly on the underlying basis of *Gibbons* v. *Ogden*, 9 Wheat. 1, in which an attempted state frustration of the benefits of invention and of improvement in methods of transportation was first condemned. The frustration here may be thought less serious, except that it cannot be avoided by payment to a licensee, but what is frustrated is of the same order and in various respects of greater magnitude. From the standpoint of essential service to the Nation, the improvements in railroading in recent years, in view of the scope of the railroad enterprise, are on a par with the early application of steam as motive power for vessels on inland waterways. The national interest in this increased effectiveness has been recognized, emphasized, and fostered by the National Congress vested with power over the instrumentalities on which the welfare of the Nation depends.

There can be no doubt that to this national interest the Arizona Train-Limit Law is opposed. The contrary can hardly be seriously urged. Can it be said that there is

adverse local interest strong enough to justify the damage to the national interest? Not only is there nothing peculiarly local to Arizona in its claim in support of its statute, but the interest in safety which it shares with other states and with the carriers and with the Nation is in its totality infringed rather than conserved by the restriction it has imposed. We submit, therefore, that on a realistic weighing of any possible local advantages to be derived therefrom, the Arizona Train-Limit Law must fall as an unconstitutional obstruction to interstate commerce.

VIII.

THE ARIZONA SUPREME COURT WHOLLY DISREGARDED THE DETERMINATIVE FACTS.

Throughout our consideration of constitutional principles and of the precedents applying them, we have emphasized that the legal doctrines and canons of judgment point to the necessity of determining each case on the basis of a consideration and comparison of all the relevant facts. In careful compliance with these appropriate canons for passing on the constitutional issues raised by the Arizona Train-Limit Law, the trial court in deciding this case in favor of the appellant made elaborate findings of fact. These covered the effect of the statute on the safety of all train operation in Arizona, the burden on the appellant in complying with the law and the consequent physical obstruction and delays imposed on interstate transportation both within and without the state. These findings of fact were not contested in the opinion of the State Supreme Court in reversing the judgment of the trial court. The State Supreme Court made no new findings, drew no contrary inferences of fact from the evidence in the record, and passed no criticism on the proof received. Instead of this, its reversal of the judgment of the trial court seems to have been based solely on the assumption of a rule of law that the statute was justified by the police power of the state notwithstand-

ing its effects on interstate commerce, and that in determining this, no consideration need be given to the facts found by the trial court or shown by the evidence. Its idea seemed to be that the only question to be passed upon was whether it might rationally be assumed that the Arizona statute bore some reasonable relation to safety.

Therefore we have in this case no judgment on the basis of a factual determination other than the judgment of the trial court in favor of the appellant.

This analysis of the action of the State Supreme Court is confirmed by the position taken by the appellee in its brief. The only factual judgment which that brief attributes to the State Supreme Court is a conclusion that the Train-Limit Law has a rational relation to safety. Such a conclusion the appellee calls the "ultimate fact" in the case, and by this it means that it is the only fact which need be determined. In regarding the action of the court below as a sufficient performance of judicial duty, appellee necessarily relies upon the assumption that the sole constitutional issue in the case is whether one can find in a train-limit law some rational relation to safety. Appellee excludes from consideration and concedes that the State Supreme Court excluded from consideration all questions of degree and all questions of fact as to the resulting burden on interstate commerce.

This raises the basic question whether the facts as to burden and benefit are pertinent to judicial judgment on the constitutional issue. On this question, the decisions and the opinions of this Court, in cases sustaining state laws as well as in those holding their application unconstitutional, are uniformly contrary to the action and lack of action of the Arizona Supreme Court.

This basic question is of more far-reaching concern in the interpretation and application of the Commerce Clause of the Federal Constitution than is the decision of any single specific controversy. In view of the mode of disposing of this controversy by the Arizona Supreme Court, the

authoritative pronouncement of this Court is essential to protect the national interest in the due freedom of interstate commerce from decisions of state courts sanctioning the application of state statutes on a theory or assumption that the competing factual considerations are not a matter for judicial inquiry and determination and judgment.

The invalidity of any such action by a state court is established by *Nashville, C. & St. L. Ry.* v. *Walters*, 294 U. S. 405, in which a state supreme court was reversed for a failure to give consideration to facts found by the trial court as material to the determination of a contention founded on the Fourteenth Amendment. More imperative still is a full consideration of facts bearing on the appropriate disposition of a Commerce Clause issue. The only objection relied on by the carrier in the *Walters* case was that it could not under the canons set by the requirement of due process of law be subjected to the expense of contributing to the cost of an underpass constructed primarily for the convenience of fast, long-haul motor carriage of passengers and goods. When, as here, the constitutional objections extend far beyond expense and embrace grievous impediments to efficient service by the railroads to the Nation, a state court clearly cannot be permitted to discountenance those objections in complete disregard of the facts.

This raises a question as to the proper disposition of an appeal from a judgment by a state supreme court which has thus acted in disregard of a constitutional requirement. In the *Walters* case, this Court required the State Supreme Court to consider the significance and persuasiveness of the findings and whether they were supported by the evidence, which, like the Arizona Supreme Court here, it had previously failed to undertake. The facts there in issue were for the most part peculiar to the locality of the underpass and to the particular rail and motor traffic involved. Thus there were special reasons why this Court in its discretion sent that case back to the State Supreme Court to do what it had left undone.

Here, however, there is no need for a similar remand. The subject matter of dispute in this case is no single, isolated and peculiar situation such as was involved in the *Walters* case. The pertinent facts already here in the record are drawn largely from official government reports. These reports contain the statistics on accidents and afford sufficient basis for weighing the claim on behalf of the statute that it is justified by considerations of promoting safety. On the other side of the scale, it is for this Court to weigh the national interest in superior efficiency in conducting interstate transportation and to give effect to the policies of Congress in promoting this national interest. It is for this Court to compare the evils of diversity of regulation by different states with the superiority of a uniform rule coming from the single hand of national authority if at any time Congress should deem it desirable to withdraw from interstate carriers the full freedom over train length which it has thus far not disturbed. On such matters, no further light from the State Supreme Court is needed for the correct disposition of this controversy.

On the ultimate weight to be accorded to duly established facts, neither the State Legislature nor the State Supreme Court can foreclose independent consideration and judgment by this Court. "This Court will determine for itself what is the necessary operation and effect of a state law challenged on the ground that it interferes with or burdens interstate commerce." *Lacoste* v. *Dept. of Conservation*, 263 U. S. 545, at 550. The "accommodation of the competing demands of the state and national interests involved" (*Parker* v. *Brown*, 317 U. S. 341, at 362) is for the ultimate judgment of this tribunal. Fully open to the consideration of this Court are both the "examination of the evidence" and the use of "available data" of which it "may take judicial notice." *Id.* at 363. In a case in which the facts found by the trial court are not questioned by the State Supreme Court and in which the pertinent data are derived largely from official government reports, there is available

in the record here an ample basis for the orderly and final disposition of this litigation through the exercise by this Court of its judgment in weighing the competing demands of state and national interests.

The contention of the appellee that the judiciary is powerless to afford a remedy against even the most extreme obstructions to interstate commerce flies in the face of a century of constitutional history from *Gibbons* v. *Ogden*, 9 Wheat. 1, to date. The contention that only Congress can grant relief is revolutionary. It asks this Court to wipe from the books every decision in which state statutes have been judicially condemned for their unjustified burden on commerce and to render inapposite and superfluous scores of opinions in which the degree of burden has been considered and weighed. "Continuity with the past" may, as Mr. Justice Holmes observed, be "only a necessity and not a duty," ("Law in Science and Science in Law," 12 Harv. Law Rev. 443, 444, Collected Legal Papers, 210, 211), but it is none the less imperative for that. As pointed out in the brief for the United States as *amicus curiae*, Congress for a century has been warranted in relying on the established doctrine and thus in assuming that no action on its part is necessary to foreclose the application to interstate commerce of state regulations which fall within the description of those which have been judicially condemned.

Such occasional suggestions of judicial impotence as have been put forth *arguendo* in dissenting opinions have recognized that state laws which discriminate against interstate commerce must be held invalid by judicial condemnation. Such recognition removes whatever support appellee's position might invoke from the language or absence of language in the Constitution, since there is no more express condemnation of discriminatory state regulations than of excessive and unjustified ones. As Mr. Justice Holmes observed in *Missouri* v. *Holland*, 252 U. S. 416, 433, "The case before us must be considered in the light of our whole experience and not merely in that of what was said a hun-

dred years ago." And in direct application to the precise problem now before us, the same Justice said in an address:

> "I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the Commerce Clause was meant to end." (Holmes, "Law and the Court," Collected Legal Papers, 295-296.)

In this respect there is a vital distinction between state police regulations questioned only as violations of the Fourteenth Amendment without any feature of extraterritorial application or repercussions and state police regulations questioned as obstructions to the free flow of commerce among the several states. The Fourteenth Amendment, unlike the Commerce Clause, does "not express a necessary adjustment in the distribution of powers in the federal system." (Frankfurter, "Mr. Justice Holmes and the Constitution," 41 Harv. Law Rev. 121, 126.) As to the Commerce Clause issues, the same authority declares:

> "In a federated nation, especially one as vast in its territory and varied in its interests as ours, the authority must be lodged somewhere to make necessary accommodations between states and the central government. The Supreme Court is that ultimate arbiter, and it relies largely on the commerce clause for its control. But to believe that this power is exercised by distilling meaning out of the words of the Constitution would be sheer illusion. Decisions under the commerce clause, whether allowing or confining state action, whether sanctioning or denying federal power, are inevitably exercises in judgment." (*Id.* at 125.)

So revolutionary is the appellee's assertion of judicial impotence to enforce the canons of the Commerce Clause that necessarily no precedents are or can be invoked in its

support. Familiar expressions in judicial opinions that certain issues are legislative in character mean something quite different from appellee's contention that a state may do what it pleases to interstate commerce so long as what it does has some rational relation to safety. They mean that within the realm in which the state is free to act, its choice of expedients is for the determination of its legislature. They do not mean that it is for the state legislature to determine the constitutional scope of state powers to regulate interstate commerce.

The significance of the contrary contention of the appellee is not confined to its concurrence in our interpretation of the disposition of the issue by the State Supreme Court. To its recognition that the State Supreme Court did not give any consideration to the extent of the burden imposed on interstate commerce by the Arizona Train-Limit Law, the appellee adds its insistence that no such consideration is necessary. Such insistence may fairly be thought to imply a recognition and confession that the acceptance of such a position is indispensable to the affirmance of the judgment below. Only desperation on the basis of well established principles would seem an adequate explanation of reliance on a contention that this Court and all others are in duty bound to close their eyes to the relation between the contribution of a Train-Limit Law to safety on the one hand and its obstruction to interstate commerce on the other.

IX.

CONCLUSION.

This case presents an extraordinary combination of circumstances and considerations leading surely to the conclusion that the Arizona Train-Limit Law is repugnant to the Commerce Clause of the Constitution.

Certain of these considerations, standing alone and without regard to the others, might well be sufficient to establish the invalidity of the state statute. There is, however,

no occasion here to confine reliance to any single, isolated practical or legal factor. What is combined in reality cannot in law rightly be dismembered and dispersed into disconnected fragments. The statute must be judged in the light of the cumulation and association of all surrounding facts, circumstances and conditions.

It is respectfully submitted that the judgment of the Arizona Supreme Court should be reversed and that the Arizona Train-Limit Law should be held unconstitutional.

Respectfully submitted,

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Washington, D. C.,
March 8, 1945.

SUPREME COURT OF THE UNITED STATES.

No. 56.—October Term, 1944.

Southern Pacific Company, Appellant, vs. State of Arizona, *ex rel.* John L. Sullivan, Attorney General of the State of Arizona. } Appeal from the Supreme Court of the State of Arizona.

[June 18, 1945.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The Arizona Train Limit Law of May 16, 1912, Arizona Code Ann., 1939, § 69-119, makes it unlawful for any person or corporation to operate within the state a railroad train of more than fourteen passenger or seventy freight cars, and authorizes the state to recover a money penalty for each violation of the Act. The questions for decision are whether Congress has, by legislative enactment, restricted the power of the states to regulate the length of interstate trains as a safety measure and, if not, whether the statute contravenes the commerce clause of the federal Constitution.

In 1940 the State of Arizona brought suit in the Arizona Superior Court against appellant, the Southern Pacific Company, to recover the statutory penalties for operating within the state two interstate trains, one a passenger train of more than fourteen cars, and one a freight train of more than seventy cars. Appellant answered, admitting the train operations, but defended on the ground that the statute offends against the commerce clause and the due process clause of the Fourteenth Amendment and conflicts with federal legislation. After an extended trial, without a jury, the court made detailed findings of fact on the basis of which it gave judgment for the railroad company. The Supreme Court of Arizona reversed and directed judgment for the state. — Ariz. —, 145 Pac. 2d 539. The case comes here on appeal under § 237(a) of the Judicial Code, appellant raising by its assignments of error the questions presented here for decision.

The Supreme Court left undisturbed the findings of the trial court and made no new findings. It held that the power of the

state to regulate the length of interstate trains had not been restricted by Congressional action. It sustained the Act as a safety measure to reduce the number of accidents attributed to the operation of trains of more than the statutory maximum length, enacted by the state legislature in the exercise of its "police power". This power the court held extended to the regulation of the operations of interstate commerce in the interests of local health, safety and well-being. It thought that a state statute, enacted in the exercise of the police power, and bearing some reasonable relation to the health, safety and well-being of the people of the state, of which the state legislature is the judge, was not to be judicially overturned, notwithstanding its admittedly adverse effect on the operation of interstate trains.

Purporting to act under § 1, paragraphs 10-17 of the Interstate Commerce Act, 24 Stat. 379 as amended (49 U. S. C. § 1 *et. seq.*), the Interstate Commerce Commission, as of September 15, 1942, promulgated as an emergency measure Service Order No. 85, 7 Fed. Reg. 7258, suspending the operation of state train limit laws for the duration of the war, and denied an application to set aside the order. *In the Matter of Service Order No. 85*, 256 I. C. C. 523. Paragraph 15 of § 1 of the Interstate Commerce Act empowers the Commission, when it is "of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country", to make or suspend rules and practices "with respect to car service," which includes by paragraph 10 of § 1 "the use, control, supply, movement, distribution, exchange, interchange, and return" of locomotives and cars, and the "supply of trains". Paragraph 16 of § 1 provides that when a carrier is unable properly to transport the traffic offered, the Commission may make reasonable directions "with respect to the handling, routing, and movement of the traffic of such carrier and its distribution over other lines of roads." The authority of the Commission to make Order No. 85 is currently under attack in *Johnston* v. *United States*, Civil Action No. 1408, pending in the Western District of Oklahoma.

The Commission's order was not in effect in 1940 when the present suit was brought for violations of the state law in that year, and the Commission's order is inapplicable to the train operations here charged as violations. Hence the question here is not

of the effect of the Commission's order, which we assume for purposes of decision to be valid, but whether the grant of power to the Commission operated to supersede the state act before the Commission's order. We are of opinion that, in the absence of administrative implementation by the Commission, § 1 does not of itself curtail state power to regulate train lengths. The provisions under which the Commission purported to act, phrased in broad and general language, do not in terms deal with that subject. We do not gain either from their words or from the legislative history any hint that Congress in enacting them intended, apart from Commission action, to supersede state laws regulating train lengths. We can hardly suppose that Congress, merely by conferring authority on the Commission to regulate car service in an "emergency", intended to restrict the exercise, otherwise lawful, of state power to regulate train lengths before the Commission finds an "emergency" to exist.

Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, *Reid* v. *Colorado*, 187 U. S. 137, 148; *Missouri Pacific Ry.* v. *Larabee Mills*, 211 U. S. 612, 621, *et seq.*; *Missouri, K. & T. Ry. Co.* v. *Harris*, 234 U. S. 412, 418-419; *Welch Co.* v. *New Hampshire*, 306 U. S. 79, 85; *Allen-Bradley Local* v. *Board*, 315 U. S. 740, 749, or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. *Sinnot* v. *Davenport*, 22 How. 227, 243; *Missouri, K. & T. Ry.* v. *Haber*, 169 U. S. 613, 623; *Savage* v. *Jones*, 225 U. S. 501, 533; *Carey* v. *South Dakota*, 250 U. S. 118, 122; *Atchison Ry. Co.* v. *Railroad Comm.*, 283 U. S. 380, 391; *Townsend* v. *Yeomans*, 301 U. S. 441, 454.

The contention, faintly urged, that the provisions of the Safety Appliance Act, 45 U. S. C. §§ 1 and 9, providing for brakes on trains, and of § 25 of Part I of the Interstate Commerce Act, 49 U. S. C., § 26(b), permitting the Commission to order the installation of train stop and control devices, operate of their own force to exclude state regulation of train lengths, has even less support. Congress, although asked to do so,[1] has declined to

[1] See Senate Report No. 416, 75th Cong., 1st Sess.; 81 Cong. Rec. 7596; and Hearings before House Committee on Interstate and Foreign Commerce, 75th Cong., 3d Sess., S. 69, Train Lengths.

pass legislation specifically limiting trains to seventy cars. We are therefore brought to appellants principal contention, that the state statute contravenes the commerce clause of the Federal Constitution.

Although the commerce clause conferred on the national government power to regulate commerce, its possession of the power does not exclude all state power of regulation. Ever since *Willson* v. *Black-Bird Creek Marsh Co.*, 2 Pet. 245, and *Cooley* v. *Board of Wardens*, 12 How. 299, it has been recognized that, in the absence of conflicting legislation by Congress, there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it. *Minnesota Rate Cases*, 230 U. S. 352, 399-400; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 187, *et seq.*; *California* v. *Thompson*, 313 U. S. 109, 113-14 and cases cited; *Parker* v. *Brown*, 317 U. S. 341, 359-60. Thus the states may regulate matters which, because of their number and diversity, may never be adequately dealt with by Congress. *Cooley* v. *Board of Wardens*, *supra*, 319; *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, 185; *California* v. *Thompson*, *supra*, 113; *Duckworth* v. *Arkansas*, 314 U. S. 390, 394; *Parker* v. *Brown*, *supra*, 362, 363. When the regulation of matters of local concern is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority. *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, 188 and cases cited; *Lone Star Gas Co.* v. *Texas*, 304 U. S. 224, 238; *Milk Board* v. *Eisenberg Co.*, 306 U. S. 346, 351; *Maurer* v. *Hamilton*, 309 U. S. 598, 603; *California* v. *Thompson*, *supra*, 113-4 and cases cited.

But ever since *Gibbons* v. *Ogden*, 9 Wheat. 1, the states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority.[2] *Cooley* v. *Board of Wardens*, *supra*, 319; *Leisy*

[2] In applying this rule the Court has often recognized that to the extent that the burden of state regulation falls on interests outside the state, it is unlikely to be alleviated by the operation of those political restraints normally exerted when interests within the state are affected. Cooley v. Board

v. *Hardin*, 135 U. S. 100, 108, 109; *Minnesota Rate Cases*, *supra*, 399-400; *Edwards* v. *California*, 314 U. S. 160, 176. Whether or not this long recognized distribution of power between the national and the state governments is predicated upon the implications of the commerce clause itself, *Brown* v. *Maryland*, 12 Wheat. 419, 447; *Minnesota Rates Cases*, *supra*, 399, 400; *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 596; *Baldwin* v. *Seelig*, 294 U. S. 511, 522; *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, 185, or upon the presumed intention of Congress, where Congress has not spoken, *Welton* v. *Missouri*, 91 U. S. 275, 282; *Hall* v. *DeCuir*, 95 U. S. 485, 490; *Brown* v. *Houston*, 114 U. S. 622, 631; *Bowman* v. *Chicago, etc. Ry.*, 125 U. S. 465, 481-2; *Leisy* v. *Hardin*, *supra*, 109; *In re Rahrer*, 140 U. S. 545, 559-60; *Brennan* v. *Titusville*, 153 U. S. 289, 302; *Covington &c. Bridge Co.* v. *Kentucky*, 154 U. S. 204, 212; *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 479, n., Dowling, Interstate Commerce and State Power, 27 Va. Law Rev. 1, the result is the same.

In the application of these principles some enactments may be found to be plainly within and others plainly without state power. But between these extremes lies the infinite variety of cases, in which regulation of local matters may also operate as a regulation of commerce, in which reconciliation of the conflicting claims of state and national power is to be attained only by some appraisal and accommodation of the competing demands of the state and national interests involved. *Parker* v. *Brown*, *supra*, 362; *Terminal Railroad Ass'n* v. *Brotherhood*, 318 U. S. 1, 8; see *DiSanto* v. *Pennsylvania*, 273 U. S. 34, 44 (and compare *California* v. *Thompson*, *supra*); *Illinois Gas Co.* v. *Public Service Co.*, 314 U. S. 498, 504-5.

For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce, and that in such cases, where Congress has not acted, this Court, and not the state legislature, is

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of Wardens, *supra*, 315; Gilman v. Philadelphia, 3 Wall. 713, 731; Escanaba Co. v. Chicago, 107 U. S. 678, 683; Robbins v. Shelby County Taxing Dist., 120 U. S. 489, 499; Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285, 294; South Carolina Highway Dept. v. Barnwell Bros., *supra*, 185, n.; McGoldrick v. Berwind-White Co., 309 U. S. 33, 46, n.; cf. McCulloch v. Maryland, 4 Wheat. 316, 428; Pound v. Turck, 95 U. S. 459, 464; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 205; Helvering v. Gerhardt, 304 U. S. 405, 412.

under the commerce clause the final arbiter between the competing demands of state and national interests. *Cooley* v. *Board of Wardens, supra; Kansas Southern Ry.* v. *Kaw Valley District*, 233 U. S. 75, 79; *South Covington Ry.* v. *Covington*, 235 U. S. 537, 546; *M., K. & T. R. Co.* v. *Texas*, 245 U. S. 484, 488; *St. Louis & S. F. Ry.* v. *Public Service Comm'n*, 254 U. S. 535, 537; *Foster-Fountain Packing Co.* v. *Haydel*, 278 U. S. 1, 10; *Gwin, etc. Inc.* v. *Henneford*, 305 U. S. 434, 441; *McCarroll* v. *Dixie Lines*, 309 U. S. 176.

Congress has undoubted power to redefine the distribution of power over interstate commerce. It may either permit the states to regulate the commerce in a manner which would otherwise not be permissible, *In re Rahrer, supra*, 561-62; *Adams Express Co.* v. *Kentucky*, 238 U. S. 190, 198; *Rosenberger* v. *Pacific Express Co.*, 241 U. S. 48, 50, 51; *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, 325-6; *Whitfield* v. *Ohio*, 297 U. S. 431, 438-40; *Kentucky Whip & Collar Co.* v. *Illinois Central R. Co.*, 299 U. S. 334, 350-51; *Hooven & Allison* v. *Evatt*, No. 38, 1944 Term, decided April 9, 1945, slip opinion p. 20, or exclude state regulation even of matters of peculiarly local concern which nevertheless affect interstate commerce. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 230; *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467; *Houston & Texas Ry.* v. *United States*, 234 U. S. 342; *American Express Co.* v. *Caldwell*, 244 U. S. 617, 626; *Ill. Cent. R. R. Co.* v. *Public Utilities Comm'n*, 245 U. S. 493, 506; *New York* v. *United States*, 257 U. S. 591, 601; *Commission* v. *Texas & N. O. R. Co.*, 284 U. S. 125, 130; *Penn. R. Co.* v. *Illinois Brick Co*, 297 U. S. 447, 459.

But in general Congress has left it to the courts to formulate the rules thus interpreting the commerce clause in its application, doubtless because it has appreciated the destructive consequences to the commerce of the nation if their protection were withdrawn. *Gwin, etc. Inc.* v. *Henneford, supra*, 441, and has been aware that in their application state laws will not be invalidated without the support of relevant factual material which will "afford a sure basis" for an informed judgment. *Terminal Railroad Ass'n* v. *Brotherhood, supra*, 8; *Southern Railway Co.* v. *King*, 217 U. S. 524. Meanwhile, Congress has accommodated its legislation, as have the states, to these rules as an established feature of our

constitutional system. There has thus been left to the states wide scope for the regulation of matters of local state concern, even though it in some measure affects the commerce, provided it does not materially restrict the free flow of commerce across state lines, or interfere with it in matters with respect to which uniformity of regulation is of predominant national concern.

Hence the matters for ultimate determination here are the nature and extent of the burden which the state regulation of interstate trains, adopted as a safety measure, imposes on interstate commerce, and whether the relative weights of the state and national interests involved are such as to make inapplicable the rule, generally observed, that the free flow of interstate commerce and its freedom from local restraints in matters requiring uniformity of regulation are interests safeguarded by the commerce clause from state interference.

While this Court is not bound by the findings of the state court, and may determine for itself the facts of a case upon which an asserted federal right depends, *Hooven & Allison* v. *Evatt*, *supra*, slip opinion p. 5, and cases cited, the facts found by the state trial court showing the nature of the interstate commerce involved, and the effect upon it of the train limit law, are not seriously questioned. Its findings with respect to the need for and effect of the statute as a safety measure, although challenged in some particulars which we do not regard as material to our decision, are likewise supported by evidence. Taken together the findings supply an adequate basis for decision of the constitutional issue.

The findings show that the operation of long trains, that is trains of more than fourteen passenger and more than seventy freight cars, is standard practice over the main lines of the railroads of the United States, and that, if the length of trains is to be regulated at all, national uniformity in the regulation adopted, such as only Congress can prescribe, is practically indispensable to the operation of an efficient and economical national railway system. On many railroads passenger trains of more than fourteen cars and freight trains of more than seventy cars are operated, and on some systems freight trains are run ranging from one hundred and twenty-five to one hundred and sixty cars in length. Outside of Arizona, where the length of trains is not restricted, appellant runs a substantial proportion of long trains. In 1939 on its com-

parable route for through traffic through Utah and Nevada from 66 to 85% of its freight trains were over 70 cars in length and over 43% of its passenger trains included more than fourteen passenger cars.

In Arizona, approximately 93% of the freight traffic and 95% of the passenger traffic is interstate. Because of the Train Limit Law appellant is required to haul over 30% more trains in Arizona than would otherwise have been necessary. The record shows a definite relationship between operating costs and the length of trains, the increase in length resulting in a reduction of operating costs per car. The additional cost of operation of trains complying with the Train Limit Law in Arizona amounts for the two railroads traversing that state to about $1,000,000 a year. The reduction in train lengths also impedes efficient operation. More locomotives and more manpower are required; the necessary conversion and reconversion of train lengths at terminals and the delay caused by breaking up and remaking long trains upon entering and leaving the state in order to comply with the law, delays the traffic and diminishes its volume moved in a given time, especially when traffic is heavy.

To relieve the railroads of these burdens, during the war emergency only, the Interstate Commerce Commission, acting under § 1 of the Interstate Commerce Act, suspended the operation of the state law for the duration of the war by its order of September 15, 1942, to which we have referred. In support of the order the Commission declared: "It was designed to save manpower, motive power, engine miles and train miles; to avoid delay in the movement of trains; to increase the efficient use of locomotives and cars and to augment the available supply thereof; and to relieve congestion of terminals caused by setting out and picking up cars on each side of the train limit law States." *In the Matter of Service Order No. 85*, 256 I. C. C. 523, 524. Appellant, because of its past compliance with the Arizona Train Law, has been unable to avail itself fully of the benefits of the suspension order because some of its equipment and the length of its sidings in Arizona are not suitable for the operation of long trains. Engines capable of hauling long trains were not in service. It can engage in long train operations to the best advantage only by rebuilding its road to some extent and by changing or adding

to its motive power equipment, which it desires to do in order to secure more efficient and economical operation of its trains.

The unchallenged findings leave no doubt that the Arizona Train Limit Law imposes a serious burden on the interstate commerce conducted by appellant. It materially impedes the movement of appellant's interstate trains through that state and interposes a substantial obstruction to the national policy proclaimed by Congress, to promote adequate, economical and efficient railway transportation service. Interstate Commerce Act, preceding § 1, 54 Stat. 899. Enforcement of the law in Arizona, while train lengths remain unregulated or are regulated by varying standards in other states, must inevitably result in an impairment of uniformity of efficient railroad operation because the railroads are subjected to regulation which is not uniform in its application. Compliance with a state statute limiting train lengths requires interstate trains of a length lawful in other states to be broken up and reconstituted as they enter each state according as it may impose varying limitations upon train lengths. The alternative is for the carrier to conform to the lowest train limit restriction of any of the states through which its trains pass, whose laws thus control the carriers' operations both within and without the regulating state.

Although the seventy car maximum for freight trains is the limitation which has been most commonly proposed, various bills introduced in the state legislatures provided for maximum freight train lengths of from fifty to one hundred and twenty-five cars, and maximum passenger train lengths of from ten to eighteen cars.[3] With such laws in force in states which are interspersed with those having no limit on train lengths, the confusion and difficulty with which interstate operations would be burdened under the varied system of state regulation and the unsatisfied need for uniformity in such regulation, if any, are evident.[4]

[3] One hundred sixty-four bills limiting train lengths have been introduced in state legislatures since 1920, of which only three were passed, in Nevada, Louisiana and Oklahoma. The Nevada and Louisiana laws were held unconstitutional and never enforced. Southern Pacific Co. *v.* Mashburn, 18 Fed. Supp. 393; Texas & New Orleans R. Co. *v.* Martin (No. 428—Equity, E. D. of La. 1936), unreported. The Arizona law, passed in 1912, was held unconstitutional in Atchison, T. & S. F. Ry. Co. *v.* La Prade, 2 Fed. Supp. 855, reversed on other grounds, 289 U. S. 444.

[4] Had these bills been passed a freight train running over established routes (from Virginia to Michigan for example) would normally proceed through states with a seventy-five car maximum (Virginia), a one hundred and twenty-five car maximum (West Virginia), a three thousand foot maximum

At present the seventy freight car laws are enforced only in Arizona and Oklahoma, with a fourteen car passenger car limit in Arizona. The record here shows that the enforcement of the Arizona statute results in freight trains being broken up and reformed at the California border and in New Mexico, some distance from the Arizona line. Frequently it is not feasible to operate a newly assembled train from the New Mexico yard nearest to Arizona, with the result that the Arizona limitation governs the flow of traffic as far east as El Paso, Texas. For similar reasons the Arizona law often controls the length of passenger trains all the way from Los Angeles to El Paso.

If one state may regulate train lengths, so may all the others, and they need not prescribe the same maximum limitation. The practical effect of such regulation is to control train operations beyond the boundaries of the state exacting it because of the necessity of breaking up and reassembling long trains at the nearest terminal points before entering and after leaving the regulating state. The serious impediment to the free flow of commerce by the local regulation of train lengths and the practical necessity that such regulation, if any, must be prescribed by a single body having a nation-wide authority are apparent.

The trial court found that the Arizona law had no reasonable relation to safety, and made train operation more dangerous. Examination of the evidence and the detailed findings makes it clear that this conclusion was rested on facts found which indicate that such increased danger of accident and personal injury as may result from the greater length of trains is more than offset by the increase in the number of accidents resulting from the larger number of trains when train lengths are reduced. In

(Ohio), and a seventy car limit (Michigan). A train from Arkansas to Wisconsin might be subjected to a fifty car maximum (Arkansas), one half mile (Mississippi), three thousand feet (Iowa), one and a half miles (Minnesota), and thirty three hundred feet (Wisconsin). A train running from Nebraska to California might be subject to a sixty, seventy five or eighty five maximum in Nebraska, to a limit fixed by commission in Kansas, to a sixty five car limit in Colorado, to a seventy five car limit in New Mexico, to a seventy car limit in Arizona, and to a seventy four car limit in California. A passenger train might be limited to fourteen cars in New Jersey, ten in Pennsylvania and eighteen in West Virginia.

[5] In Oklahoma three lines running from Chicago or Kansas City westpass through Oklahoma for distances of sixty, one hundred and seventeen and one hundred and forty three miles. Since no other state through which the traffic passes (except Arizona) restricts train lengths in any way, the effect of the Oklahoma law is to require through trains to be broken up for the short distances they pass through that state.

considering the effect of the statute as a safety measure, therefore, the factor of controlling significance for present purposes is not whether there is basis for the conclusion of the Arizona Supreme Court that the increase in length of trains beyond the statutory maximum has an adverse effect upon safety of operation. The decisive question is whether in the circumstances the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it and subject it to local regulation which does not have a uniform effect on the interstate train journey which it interrupts.

The principal source of danger of accident from increased length of trains is the resulting increase of "slack action" of the train. Slack action is the amount of free movement of one car before it transmits its motion to an adjoining coupled car. This free movement results from the fact that in railroad practice cars are loosely coupled, and the coupling is often combined with a shock-absorbing device, a "draft gear", which, under stress, substantially increases the free movement as the train is started or stopped. Loose coupling is necessary to enable the train to proceed freely around curves and is an aid in starting heavy trains, since the application of the locomotive power to the train operates on each car in the train successively, and the power is thus utilized to start only one car at a time.

The slack action between cars due to loose couplings varies from seven-eighths of an inch to one and one-eighth inches and, with the added free movement due to the use of draft gears, may be as high as six or seven inches between cars. The length of the train increases the slack since the slack action of a train is the total of the free movement between its several cars. The amount of slack action has some effect on the severity of the shock of train movements, and on freight trains sometimes results in injuries to operatives, which most frequently occur to occupants of the caboose. The amount and severity of slack action, however, are not wholly dependent upon the length of train, as they may be affected by the mode and conditions of operation as to grades, speed, and load. And accidents due to slack action also occur in the operation of short trains. On comparison of the number of slack action accidents in Arizona with those in Nevada, where the length of

trains is now unregulated, the trial court found that with substantially the same amount of traffic in each state the number of accidents was relatively the same in long as in short train operations. While accidents from slack action do occur in the operation of passenger trains, it does not appear that they are more frequent or the resulting shocks more severe on long than on short passenger trains. Nor does it appear that slack action accidents occurring on passenger trains, whatever their length, are of sufficient severity to cause serious injury or damage.

As the trial court found, reduction of the length of trains also tends to increase the number of accidents because of the increase in the number of trains. The application of the Arizona law compelled appellant to operate 30.08%, or 4,304, more freight trains in 1939 than would otherwise have been necessary. And the record amply supports the trial court's conclusion that the frequency of accidents is closely related to the number of trains run. The number of accidents due to grade crossing collisions between trains and motor vehicles and pedestrians, and to collisions between trains, which are usually far more serious than those due to slack action, and accidents due to locomotive failures, in general vary with the number of trains.[6] Increase in the number of trains results in more starts and stops, more "meets" and "passes", and more switching movements, all tending to increase the number of accidents not only to train operatives and other railroad employees, but to passengers and members of the public exposed to danger by train operations.

Railroad statistics introduced into the record tend to show that this is the result of the application of the Arizona Train Limit Law to appellant, both with respect to all railroad casualties within the state and those affecting only trainmen whom the train limit law is supposed to protect. The accident rate in Arizona is much higher than on comparable lines elsewhere, where there is no regulation of length of trains. The record lends support to the trial court's conclusion that the train length limitation increased rather than diminished the number of accidents. This is shown

[6] The record shows that in 1939 the number of slack accident casualties in the United States, 399, was only 6% of the number of train and train service casualties to railroad employees; 6,713. In that year three of the 399 slack accident casualties were fatal, whereas the average number of grade crossing casualties per year from 1935 to 1939 was 5,718. And in 1939, 1,394 persons were killed and 3,999 were injured in highway grade crossing accidents. I. C. C., Bureau of Statistics, Accident Bulletin No. 108, pp. 22–23.

by comparison of appellant's operations in Arizona with those in Nevada,[7] and by comparison of operations of appellant and of the Santa Fe Railroad in Arizona with those of the same roads in New Mexico,[8] and by like comparison between appellant's operations in Arizona and operations throughout the country.[9]

Upon an examination of the whole case the trial court found that "if short-train operation may or should result in any decrease in the number or severity of the 'slack' or 'slack-surge' type of accidents or casualties, such decrease is substantially more than offset by the increased number of accidents and casualties from other causes that follow the arbitrary limitation of freight trains to 70 cars . . . and passenger trains to 14 cars."

We think, as the trial court found, that the Arizona Train Limit Law, viewed as a safety measure, affords at most slight and dubious advantage, if any, over unregulated train lengths, because it results in an increase in the number of trains and train operations and the consequent increase in train accidents of a character generally more severe than those due to slack action. Its undoubted effect on the commerce is the regulation, without securing uniformity, of the length of trains operated in interstate commerce, which lack is itself a primary cause of preventing the free flow of commerce by delaying it and by substantially increasing its cost and impairing its efficiency. In these respects the case differs from those where a state, by regulatory measures affecting the commerce, has removed or reduced safety hazards without substantial interference with the interstate movement of trains. Such are measures abolishing the car stove, *New*

[7] With passenger traffic in Nevada 78% as heavy as in Arizona, from 1923 to 1938 two hundred and thirty-nine casualties were caused to persons by passenger trains in Arizona and one hundred and nine in Nevada. Between 1923 and 1939 five persons in Nevada and fourteen in Arizona were injured by sudden stops or jerks on passenger trains.

[8] Casualties to employees, occurring in freight train operations in New Mexico, have been substantially less in both number and frequency than in Arizona. From 1930 to 1940 there were one hundred and twenty-nine casualties to all classes of employees in New Mexico at the rate of 7.97 per million train miles, 12.84 per hundred million car miles. In Arizona there were two hundred and fifty-one casualties to employees, at the rate of 10.03 per million train miles, and 18.10 per hundred million car miles.

[9] On a national basis the findings show that while the national accident rate per hundred million car miles for all railroad employees and for trainmen decreased 70% to 66% respectively between 1923-1928 and 1935-1940, the rate for the Southern Pacific in Arizona declined 52.3% and 53.3%. Appellant's rate in Nevada decreased 71.1% and 69.1%

York, N. H. & H. R. Co. v. *New York*, 165 U. S. 628; requiring locomotives to be supplied with electric headlights, *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280; providing for full train crews, *Chicago, R. I. & Pac. Ry. Co.* v. *Arkansas*, 219 U. S. 453; *St. Louis & Iron Mtn. Ry.* v. *Arkansas*, 240 U. S. 518; *Missouri Pacific R. Co.* v. *Norwood*, 283 U. S. 249; and for the equipment of freight trains with cabooses, *Terminal Railroad Ass'n* v. *Brotherhood*, *supra*.

The principle that, without controlling Congressional action, a state may not regulate interstate commerce so as substantially to affect its flow or deprive it of needed uniformity in its regulation is not to be avoided by "simply invoking the convenient apologetics of the police power," *Kansas Southern Ry.* v. *Kaw Valley District*, *supra*, 79; *Buck* v. *Kuykendall*, 267 U. S. 307, 315. In the *Kaw Valley* case the Court held that the state was without constitutional power to order a railroad to remove a railroad bridge over which its interstate trains passed, as a means of preventing floods in the district and of improving its drainage, because it was "not pretended that local welfare needs the removal of the defendants' bridges at the expense of the dominant requirements of commerce with other states, but merely that it would be helped by raising them." And in *Seaboard Air Line Ry.* v. *Blackwell*, 244 U. S. 310, it was held that the interference with interstate rail transportation resulting from a state statute requiring as a safety measure that trains come almost to a stop at grade crossings, outweigh the local interest in safety, when it appeared that compliance increased the scheduled running time more than six hours in a distance of one hundred and twenty-three miles. Cf. *Southern Rail-Way Co.* v. *King*, *supra*, where the crossings were less numerous and the burden to interstate commerce was not shown to be heavy; and see *Erb* v. *Morsch*, 177 U. S. 584.

Similarly the commerce clause has been held to invalidate local "police power" enactments fixing the number of cars in an interstate train and the number of passengers to be carried in each car, *South Covington Ry.* v. *Covington*, *supra*, 553; regulating the segregation of colored passengers in interstate trains, *Hall* v. *DeCuir*, *supra*, 488-9; requiring burdensome intrastate stops of interstate trains, *Illinois Central Railroad Co.* v. *Illinois*, 163 U. S. 142; *Cleveland, etc. Ry. Co.* v. *Illinois*, 177 U. S. 514; *Mississippi R. R. Com.* v. *Illinois Central R. R.*, 203 U. S. 335; *Herndon* v. *Chi., R. I. & Pac. Ry.*, 218 U. S. 135; *St. Louis S. F. Ry.* v. *Pub. Serv. Comm'n*, 261 U. S. 369; requiring an in-

terstate railroad to detour its through passenger trains for the benefit of a small city, *St. Louis & S. F. Ry.* v. *Public Service Comm'n, supra;* interfering with interstate commerce by requiring interstate trains to leave on time, *Missouri, K. & T. Ry. Co.* v. *Texas,* 245 U. S. 484; regulating car distribution to interstate shippers, *St. Louis S. W. Ry.* v. *Arkansas,* 217 U. S. 136; or establishing venue provisions requiring railroads to defend accident suits at points distant from the place of injury and the residence and activities of the parties, *Davis* v. *Farmers Cooperative Co.,* 262 U. S. 312; *Michigan Central* v. *Mix,* 278 U. S. 492; cf. *Denver & R. G. W. R. Co.* v. *Terte,* 284 U. S. 284; see also *Buck* v. *Kuykendall, supra; Foster-Fountain Packing Co.* v. *Haydel, supra; Baldwin* v. *Seelig, supra,* 524; *South Carolina Highway Dept.* v. *Barnwell Bros., supra,* 184-5 n., and cases cited.

More recently in *Kelly* v. *Washington,* 302 U. S. 1, 15, we have pointed out that when a state goes beyond safety measures which are permissible because only local in their effect upon interstate commerce, and "attempts to impose particular standards as to structure, design, equipment and operation [of vessels plying interstate] which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the state in a particular matter goes too far must be left to be determined when the precise question arises."

Here we conclude that the state does go too far. Its regulation of train lengths, admittedly obstructive to interstate train operation, and having a seriously adverse effect on transportation efficiency and economy, passes beyond what is plainly essential for safety since it does not appear that it will lessen rather than increase the danger of accident. Its attempted regulation of the operation of interstate trains cannot establish nation-wide control such as is essential to the maintenance of an efficient transportation system, which Congress alone can prescribe. The state interest cannot be preserved at the expense of the national interest by an enactment which regulates interstate train lengths without securing such control, which is a matter of national concern. To this the interest of the state here asserted is subordinate.

Appellees especially rely on the full train crew cases, *Chicago, R. I. & Pac. Ry. Co.* v. *Arkansas*, *supra*; *St. Louis & Iron Mtn. Ry.* v. *Arkansas*, *supra*; *Missouri Pacific R. Co.* v. *Norwood*, *supra*, and also on *South Carolina Highway Dept.* v. *Barnwell Bros.*, *supra*, as supporting the state's authority to regulate the length of interstate trains. While the full train crew laws undoubtedly placed an added financial burden on the railroads in order to serve a local interest, they did not obstruct interstate transportation or seriously impede it. They had no effects outside the state beyond those of picking up and setting down the extra employees at the state boundaries; they involved no wasted use of facilities or serious impairment of transportation efficiency, which are among the factors of controlling weight here. In sustaining those laws the Court considered the restriction a minimal burden on the commerce comparable to the law requiring the licensing of engineers as a safeguard against those of reckless and intemperate habits, sustained in *Smith* v. *Alabama*, 124 U. S. 465, or those afflicted with color blindness, upheld in *Nashville, &c. Railway* v. *Alabama*, 128 U. S. 96, and other similar regulations. *New York, N. H. & H. R. Co.* v. *New York*, *supra*; *Atlantic Coast Line Ry.* v. *Georgia*, *supra*; cf. *County of Mobile* v. *Kimball*, 102 U. S. 691.

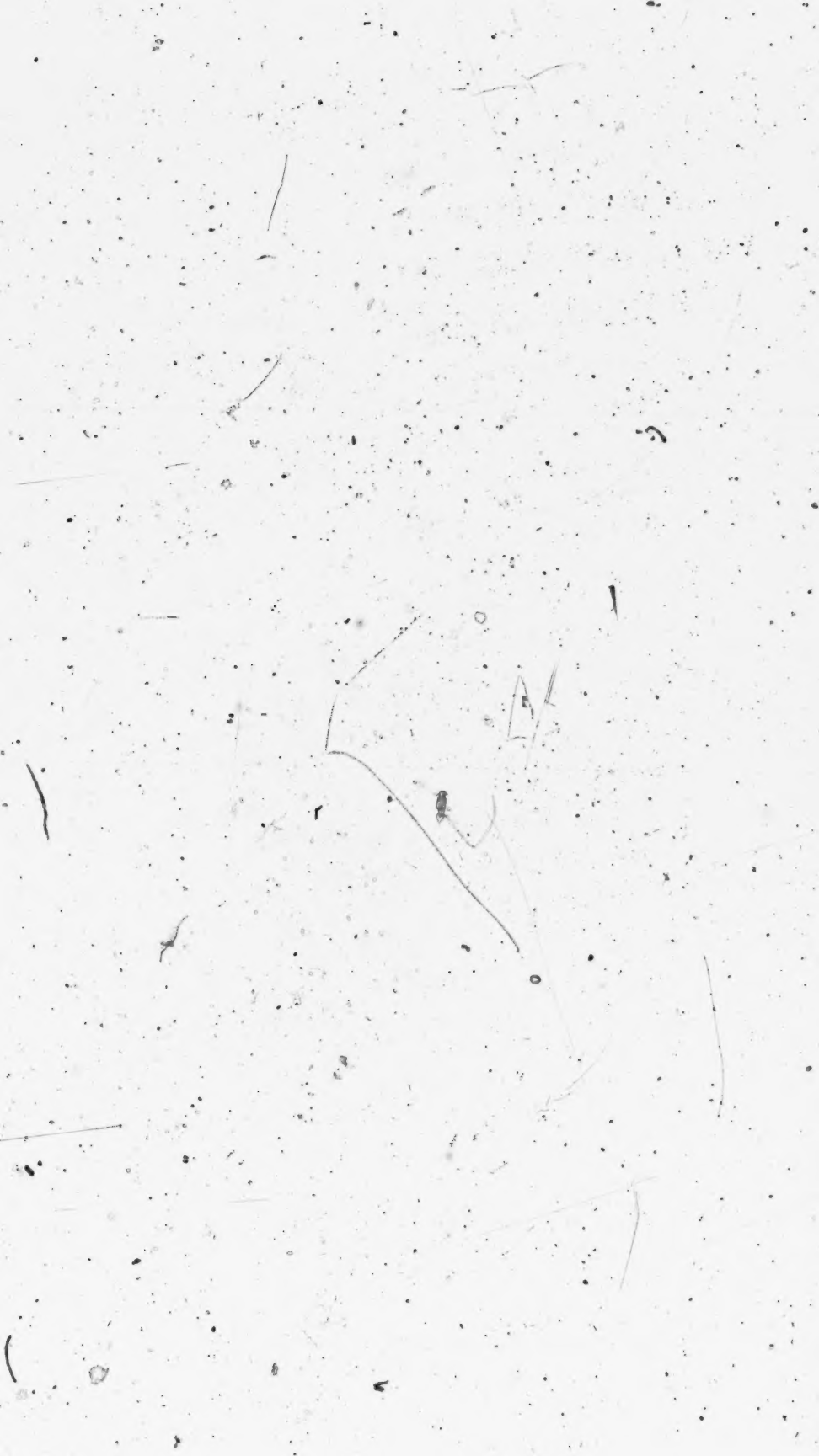
South Carolina Highway Dept. v. *Barnwell Bros.*, *supra*, was concerned with the power of the state to regulate the weight and width of motor cars passing interstate over its highways, a legislative field over which the state has a far more extensive control than over interstate railroads. In that case, and in *Maurer* v. *Hamilton*, *supra*, we were at pains to point out that there are few subjects of state regulation affecting interstate commerce which are so peculiarly of local concern as is the use of the state's highways. Unlike the railroads local highways are built, owned and maintained by the state or its municipal subdivisions. The state is responsible for their safe and economical administration. Regulations affecting the safety of their use must be applied alike to intrastate and interstate traffic. The fact that they affect alike shippers in interstate and intrastate commerce in great numbers, within as well as without the state, is a safeguard against regulatory abuses. Their regulation is akin to quarantine measures, game laws, and like local regulations of rivers, harbors, piers, and docks, with respect to which the state has exceptional scope for

the exercise of its regulatory power, and which, Congress not acting, have been sustained even though they materially interfere with interstate commerce (303 U. S. at 187-188 and cases cited).

The contrast between the present regulation and the full train crew laws in point of their effects on the commerce, and the like contrast with the highway safety regulations, in point of the nature of the subject of regulation and the state's interest in it, illustrate and emphasize the considerations which enter into a determination of the relative weights of state and national interests where state regulation affecting interstate commerce is attempted. Here examination of all the relevant factors makes it plain that the state interest is outweighed by the interest of the nation in an adequate, economical and efficient railway transportation service, which must prevail.

Reversed.

Mr. Justice RUTLEDGE concurs in the result.



SUPREME COURT OF THE UNITED STATES.

No. 56.—October Term, 1944.

Southern Pacific Company, Appellant,
vs.
State of Arizona *ex rel.* John L. Sullivan, Attorney General of the State of Arizona.

On Appeal from the Supreme Court of the State of Arizona.

[June 18, 1945.]

Mr. Justice Black, dissenting.

In *Hennington* v. *Georgia*, 163 U. S. 299, 304, a case which involved the power of a state to regulate interstate traffic, this Court said, "The whole theory of our government, federal and state, is hostile to the idea that questions of legislative authority may depend . . . upon opinions of judges as to the wisdom or want of wisdom in the enactment of laws under powers clearly conferred on the legislature." What the Court decides today is that it is unwise governmental policy to regulate the length of trains. I am therefore constrained to note my dissent.

For more than a quarter of a century, railroads and their employees have engaged in controversies over the relative virtues and dangers of long trains. Railroads have argued that they could carry goods and passengers cheaper in long trains than in short trains. They have also argued that while the danger of personal injury to their employees might in some respects be greater on account of the operation of long trains, this danger was more than offset by an increased number of accidents from other causes brought about by the operation of a much larger number of short trains. These arguments have been, and are now, vigorously denied. While there are others, the chief causes assigned for the belief that long trains unnecessarily jeopardize the lives and limbs of railroad employees relate to "slack action." Cars coupled together retain a certain free play of movement, ranging between 1½ inches and 1 foot, and this is called "slack action." Train brakes do not ordinarily apply or release simultaneously on all cars. This frequently results in a severe shock or jar to cars, particularly those in the rear of a train. It has always been the

position of the employees that the dangers from "slack action" correspond to and are proportionate with the length of the train. The argument that "slack movements" are more dangerous in long trains than in short trains seems never to have been denied. The railroads have answered it by what is in effect a plea of confession and avoidance. They say that the added cost of running long trains places an unconstitutional burden on interstate commerce. Their second answer is that the operation of short trains requires the use of more separate train units; that a certain number of accidents resulting in injury are inherent in the operation of each unit, injuries which may be inflicted either on employees or on the public; consequently, they have asserted that it is not in the public interest to prohibit the operation of long trains.

In 1912, the year Arizona became a state, its legislature adopted and referred to the people several safety measures concerning the operation of railroads. One of these required railroads to install electric headlights, a power which the state had under this Court's opinion in *Atlantic Coast Line R. Co. v. Georgia*, 234 U. S. 280. Another Arizona safety statute submitted at the same time required certain tests and service before a person could act as an engineer or train conductor, and thereby exercised a state power similar to that which this Court upheld in *Nashville, etc., R. Co. v. Alabama*, 128 U. S. 96. The third safety statute which the Arizona legislature submitted to the electorate, and which was adopted by it, is the train limitation statute now under consideration. By its enactment the legislature and the people adopted the viewpoint that long trains were more dangerous than short trains, and limited the operation of train units to 14 cars for passenger and 70 cars for freight. This same question was considered in other states, and some of them, over the vigorous protests of railroads, adopted laws similar to the Arizona statute.[1]

This controversy between the railroads and their employees, which was nation-wide, was carried to Congress. Extensive hearings took place. The employees' position was urged by members of the various Brotherhoods. The railroads' viewpoint was presented through representatives of their National Association.

[1] A resume of these laws and their reception by the Courts is set out in the opinion of the Supreme Court of Arizona in this case, — Ariz. —, 145 Pac. 2d 530.

In 1937, the Senate Interstate Commerce Committee after its own exhaustive hearings unanimously recommended that trains be limited to 70 cars as a safety measure.[2] The Committee in its Report reviewed the evidence and specifically referred to the large and increasing number of injuries and deaths suffered by railroad employees; it concluded that the admitted danger from slack movement was greatly intensified by the operation of long trains; that short trains reduce this danger; that the added cost of short trains to the railroad was no justification for jeopardizing the safety of railroad employees; and that the legislation would provide a greater degree of safety for persons and property, increase protection for railway employees and the public, and improve transportation services for shippers and consumers. The Senate passed the bill,[3] but the House Committee failed to report it out.

During the hearings on that measure, frequent references were made to the Arizona statute. It is significant, however, that American railroads never once asked Congress to exercise its unquestioned power to enact uniform legislation on that subject, and thereby invalidate the Arizona law. That which for some unexplained reason they did not ask Congress to do when it had the very subject of train length limitations under consideration, they shortly thereafter asked an Arizona state court to do.

In the state court a rather extraordinary "trial" took place. Charged with violating the law, the railroad admitted the charge. It alleged that the law was unconstitutional, however, and sought a trial of facts on that issue. The essence of its charge of unconstitutionality rested on one of these two grounds: (1) the legislature and people of Arizona erred in 1912 in determining that the running of long cars was dangerous; or (2) railroad conditions had so improved since 1912 that previous dangers did not exist to the same extent, and that the statute should be stricken down either because it cast an undue burden on interstate commerce by reason of the added cost, or because the changed conditions had rendered the Act "arbitrary and unreasonable." Thus, the issue which the Court "tried" was not whether the railroad was guilty of violating the law, but whether the law was unconstitutional either because the legislature had been guilty of mis-

[2] Senate Report No. 416, 75th Cong., 1st Sess.

[3] 81 Cong. Rec. 7596. The record does not show any dissenting votes cast against the bill. The debate on the measure appears at pp. 7564-7595.

judging the facts concerning the degree of the danger of long trains, or because the 1912 conditions of danger no longer existed.

Before the state trial judge finally determined that the dangers found by the legislature in 1912 no longer existed, he heard evidence over a period of 5½ months which appears in about 3000 pages of the printed record before us. It then adopted findings of fact submitted to it by the railroad, which cover 148 printed pages, and conclusions of law which cover 5 pages. We can best understand the nature of this "trial" by analogizing the same procedure to a defendant charged with violating a state or national safety appliance act, where the defendant comes into court and admits violation of the act. In such cases, the ordinary procedure would be for the court to pass upon the constitutionality of the act, and either discharge or convict the defendants. The procedure here, however, would justify quite a different trial method. Under it, a defendant is permitted to offer voluminous evidence to show that a legislative body has erroneously resolved disputed facts in finding a danger great enough to justify the passage of the law. This new pattern of trial procedure makes it necessary for a judge to hear all the evidence offered as to why a legislature passed a law and to make findings of fact as to the validity of those reasons. If under today's ruling a court does make findings as to a danger contrary to the findings of the legislature, and the evidence heard "lends support" to those findings, a court can then invalidate the law. In this respect, the Arizona County Court acted, and this Court today is acting, as a "super-legislature."[4]

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[4] The Court today invalidates the Arizona law in accordance with the identical "super-legislature" method (so designated by Justices Brandeis and Holmes) used by the majority to invalidate a Nebraska statute regulating the weights of loaves of bread. Burns Baking Co. v. Bryan, 264 U. S. 504, 535. For here, as there, this Court has overruled a state legislature's finding that an evil existed, and that the state law would not impose an unconstitutional "burden" upon those regulated. The dissent in the *Burns* case said:

"To decide, as a fact, that the prohibition of excess weights 'is not necessary for the protection of the purchasers against imposition and fraud by short weights'; that it 'is not calculated to effectuate that purpose'; and that it 'subjects bakers and sellers of bread' to heavy burdens, is, in my opinion, an exercise of the powers of a super-legislature—not the performance of the constitutional function of judicial review."

That decision rested on the Due Process Clause while today's decision rests on the Commerce Clause. But that difference does not make inapplicable here the principles invoked by the dissenters in the *Burns* case.

The use of the "super-legislature" technique has been repeated to strike

Even if this method of invalidating legislative acts is a correct one, I still think that the "findings" of the state court do not authorize today's decision. That court did not find that there is no unusual danger from slack movements in long trains. It did decide on disputed evidence that the long train "slack movement" dangers were more than offset by prospective dangers as a result of running a larger number of short trains, since many people might be hurt at grade crossings. There was undoubtedly some evidence before the state court from which it could have reached such a conclusion. There was undoubtedly as much evidence before it which would have justified a different conclusion.

Under those circumstances, the determination of whether it is in the interest of society for the length of trains to be governmentally regulated is a matter of public policy. Someone must fix that policy—either the Congress, or the state, or the courts. A century and a half of constitutional history and government admonishes this Court to leave that choice to the elected legislative representatives of the people themselves, where it properly belongs both on democratic principles and the requirements of efficient government.

I think that legislatures, to the exclusion of courts, have the constitutional power to enact laws limiting train lengths, for the purpose of reducing injuries brought about by "slack movements." Their power is not less because a requirement of short trains might increase grade crossing accidents. This latter fact raises an entirely different element of danger which is itself subject to legislative regulation. For legislatures may, if necessary, require railroads to take appropriate steps to reduce the likelihood of injuries at grade crossings. *Denver and R. G. R. R. Co.* v. *Denver*, 250 U. S. 241. And the fact that grade crossing improvements may be expensive is no sufficient reason to say that an unconstitutional "burden" is put upon a railroad even though it be an interstate road. *Erie R. R. Co.* v. *Public Utilities Commission*, 254 U. S. 394, 408-411.

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down other statutes. See, e. g., Chicago, M. & St. P. R. R. v. Wisconsin, 238 U. S. 491, 499; Weaver v. Palmer Bros. Co., 270 U. S. 402, dissent at 415. See also dissents in Schlesinger v. Wisconsin, 270 U. S. 230, 241, 242; New State Ice Co. v. Liebman, 285 U. S. 262, 284-285. For a case in which this Court declined to review the "economics or the facts" behind a legislative enactment, see Central Lumber Co. v. South Dakota, 226 U. S. 157, 161; cf. Standard Oil Co. v. Marysville, 279 U. S. 582, 586. See also Powell v. Pennsylvania, 127 U. S. 678, 686; dissenting opinion, Polk Company v. Glover, 305 U. S. 5, 10-19.

The Supreme Court of Arizona did not discuss the County Court's so-called findings of fact. It properly designated the Arizona statute as a safety measure, and finding that it bore a reasonable relation to its purpose declined to review the judgment of the legislature as to the necessity for the passage of the act. In so doing it was well fortified by a long line of decisions of this Court. Today's decision marks an abrupt departure from that line of cases.

There have been many sharp divisions of this Court concerning its authority, in the absence of congressional enactment, to invalidate state laws as violating the Commerce Clause. See e. g., *Adams Manufacturing Co.* v. *Storen*, 304 U. S. 307; *Gwin, etc., Inc.* v. *Henneford*, 305 U. S. 434; *McCarroll* v. *Dixie Greyhound Lines*, 309 U. S. 176. That discussion need not be renewed here, because even the broadest exponents of judicial power in this field have not heretofore expressed doubt as to a state's power, absent a paramount congressional declaration, to regulate interstate trains in the interest of safety. For as early as 1913, this Court, speaking through Mr. Justice Hughes, later Chief Justice, referred to "the settled principle that, in the absence of legislation by Congress, the states are not denied the exercise of that power to secure safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce. That has been the law since the beginning of railroad transportation." *Atlantic Coast Line* v. *Georgia*, 234 U. S. 280, 291. Until today, the oft-repeated principles of that case have never been repudiated in whole or in part.

But, it is said today, the principle there announced does not apply because if one state applies a regulation of its own to interstate trains, "uniformity" in regulation or rather non-regulation, is destroyed. Justice Hughes speaking for the Court in the *Atlantic Coast Line* case made short shrift of that same argument. He there referred to the contention that "if state requirement conflicts it will be necessary to carry additional apparatus and to make various adjustments of state lines which would delay and inconvenience interstate traffic." In answer to this argument he reiterated a former declaration of this Court in *New York, New Haven and Hartford R. R. Co.* v. *New York*, 165 U. S. 628, on this subject, and added that "If there is a conflict in such local

regulation, by which interstate commerce may be inconvenienced —if there appears to be need of standardization of safe appliances and of providing rules of operation which will govern the entire interstate road irrespective of state boundaries—there is a simple remedy; and it can be assumed that it can not be readily applied if there be real occasion for it. That remedy does not rest in a denial to the state, in the absence of conflicting federal action, of its power to protect life and property within its borders, but it does lie in the exercise of the paramount authority of Congress in its control of interstate commerce to establish such regulations as in its judgment may be deemed appropriate and sufficient. Congress, when it pleases, may give the rule and make the standards to be observed on the interstate highway." p. 292.

That same statement has in substance been made in many other decisions of this Court, a number of which are cited in the *Atlantic Coast Line* case, and all of them are today swept into the discard. In no one of all these previous cases was it more appropriate than here to call attention to the fact that Congress could when it pleased establish a uniform rule as to the length of trains. Congress knew about the Arizona law. It is common knowledge that the Interstate Commerce Committees of the House and the Senate keep in close and intimate touch with the affairs of railroads and other national means of transportation. Every year brings forth new legislation which goes through those Committees, much of it relating to safety. The attention of the members of Congress and of the Senate have been focused on the particular problem of the length of railroad trains. We cannot assume that they were ignorant of the commonly known fact that a long train might be more dangerous in some territories and on some particular types of railroad. The history of congressional consideration of this problem leaves little if any room to doubt that the choice of Congress to leave the state free in this field was a deliberate choice, which was taken with a full knowledge of the complexities of the problems and the probable need for diverse regulations in different localities. I am therefore compelled to reach the conclusion that today's decision is the result of the belief of a majority of this Court that both the legislature of Arizona and the Congress made wrong policy decisions in permitting a law to stand which limits the length of railroad

trains. I should at least give the Arizona statute the benefit of the same rule which this Court said should be applied in connection with state legislation under attack for violating the Fourteenth Amendment, that is, that legislative bodies have "a wide range of legislative discretion, . . . and their conclusions respecting the wisdom of their legislative acts are not reviewable by the Court." *Arizona Employers' Liability Cases*, 250 U. S. 400, 419.

When we finally get down to the gist of what the Court today actually decides, it is this: Even though more railroad employees will be injured by "slack action" movements on long trains than on short trains, there must be no regulation of this danger in the absence of "uniform regulations." That means that no one can legislate against this danger except the Congress; and even though the Congress is perfectly content to leave the matter to the different state legislatures, this Court, on the ground of "lack of uniformity", will require it to make an express avowal of that fact before it will permit a state to guard against that admitted danger.

We are not left in doubt as to why, as against the potential peril of injuries to employees, the Court tips the scales on the side of "uniformity." For the evil it finds in a lack of uniformity is that it (1) delays interstate commerce, (2) increases its cost and (3) impairs its efficiency. All three of these boil down to the same thing, and that is that running shorter trains would increase the cost of railroad operations. The "burden" on commerce reduces itself to mere cost because there was no finding, and no evidence to support a finding that by the expenditure of sufficient sums of money, the railroads could not enable themselves to carry goods and passengers just as quickly and efficiently with short trains as with long trains. Thus the conclusion that a requirement for long trains will "burden interstate commerce" is a mere euphemism for the statement that a requirement for long trains will increase the cost of railroad operations.

In the report of the Senate Committee, *supra*, attention was called to the fact that in 1935, 6,351 railroad employees were injured while on duty, with a resulting loss of more than 200,000 working days, and that injuries to trainmen and enginemen increased more than 29% in 1936.[5] Nevertheless, the Court's action

[5] These figures appear to be considerably less than those later reported. See Tiller v. Atlantic Coast Line Railroad Co., 318 U. S. 54, 58, note 4.

in requiring that money costs outweigh human values is sought to be buttressed by a reference to the express policy of Congress to promote an "economical national railroad system." I cannot believe that if Congress had defined what it meant by "economical", it would have required money to be saved at the expense of the personal safety of railway employees. Its whole history for the past 25 years belies such an interpretation of its language. Judicial opinions rather than legislative enactments have tended to emphasize costs. See *Tiller* v. *Atlantic Coast Line Railroad Co., supra*, 58-60. A different congressional attitude has been shown by the passage of numerous safety appliance provisions, a federal employees' compensation act, abolition of the judicially created doctrine of assumption of risk and contributory negligence, and various other types of legislation. Unfortunately, the record shows, as pointed out in the *Tiller* case, that the courts have by narrow and restricted interpretation too frequently reduced the full scope of protection which Congress intended to provide.

This record in its entirety leaves me with no doubt whatever that many employees have been seriously injured and killed in the past, and that many more are likely to be so in the future, because of "slack movement" in trains. Everyday knowledge as well as direct evidence presented at the various hearings, substantiates the report of the Senate Committee that the danger from slack movement is greater in long trains than in short trains. It may be that offsetting dangers are possible in the operation of short trains. The balancing of these probabilities, however, is not in my judgment a matter for judicial determination, but one which calls for legislative consideration. Representatives elected by the people to make their laws, rather than judges appointed to interpret those laws, can best determine the policies which govern the people. That at least is the basic principle on which our democratic society rests. I would affirm the judgment of the Supreme Court of Arizona.

SUPREME COURT OF THE UNITED STATES.

No. 36.—October Term, 1944.

Southern Pacific Company, Appellant,
vs.
State of Arizona, *ex rel.* John L. Sullivan, Attorney General of the State of Arizona.

Appeal from the Supreme Court of the State of Arizona.

[June 18, 1945.]

Mr. Justice Douglas, dissenting.

I have expressed my doubts whether the courts should intervene in situations like the present and strike down state legislation on the grounds that it burdens interstate commerce. *McCarroll* v. *Dixie Greyhound Lines*, 309 U. S. 176, 183-189. My view has been that the courts should intervene only where the state legislation discriminated against interstate commerce or was out of harmony with laws which Congress had enacted. p. 184. It seems to me particularly appropriate that that course be followed here. For Congress has given the Interstate Commerce Commission broad powers of regulation over interstate carriers. The Commission is the national agency which has been entrusted with the task of promoting a safe, adequate, efficient, and economical transportation service. It is the expert on this subject. It is in a position to police the field. And if its powers prove inadequate for the task, Congress, which has paramount authority in this field, can implement them.

But the Court has not taken that view. As a result the question presented is whether the total effect of Arizona's train-limit as a safety measure is so slight as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede or burden it. The voluminous evidence has been reviewed in the opinion of the Court and in the dissenting opinion of Mr. Justice Black. If I sat as a member of the Interstate Commerce Commission or of a legislative committee to decide whether Arizona's train-limit law should be superseded by a federal regulation, the question would not be free from doubt for me.

If we had before us the ruling of the Interstate Commerce Commission (*In the Matter of Service Order No. 85*, 256 I. C. C. 523, 534) that Arizona's train-limit law infringes "the national interest in maintaining the free flow of commerce under the present emergency war conditions," I would accept its expert appraisal of the facts, assuming it had the authority to act. But that order is not before us. And the present case deals with a period of time which antedates the war emergency. Moreover, we are dealing here with state legislation in the field of safety where the propriety of local regulation has long been recognized. See *Atlantic Coast Line R. Co.* v. *Georgia*, 234 U. S. 280, 291, and cases collected in *California* v. *Thompson*, 313 U. S. 109, 113-114. Whether the question arises under the Commerce Clause or the Fourteenth Amendment, I think the legislation is entitled to a presumption of validity. If a State passed a law prohibiting the hauling of more than one freight car at a time, we would have a situation comparable in effect to a state law requiring all railroads within its borders to operate on narrow gauge tracks. The question is one of degree and calls for a close appraisal of the facts.[1] I am not persuaded that the evidence adduced by the railroads overcomes the presumption of validity to which this train-limit law is entitled. For the reasons stated by Mr. Justice BLACK, Arizona's train-limit law should stand as an allowable regulation enacted to protect the lives and limbs of the men who operate the trains.

[1] See Iiklé, Judicial Determination of Questions of Fact Affecting The Constitutional Validity of Legislative Action, 38 Harv. L. Rev. 6.